



Rhode Island Department of Behavioral Healthcare,  
Developmental Disabilities & Hospitals (BHDDH)

# Home and Community Based Services (HCBS) Final Rule Guidance for Implementation

The Medicaid HCBS Final Rule is set of requirements HCBS programs must adhere to and come into compliance with. The Final Rule requires programs to be integrated and support full access to the community for participants. This document provides an overview of these requirements, with guidance for implementation. Topics presented include integration, rights, autonomy, choice, and more.

For more information about the HCBS Final Rule, visit [the Centers for Medicare & Medicaid Services website](#).

**Address:** 6 Harrington Rd, Cranston, RI 02920

**Website:** [www.bhddh.ri.gov](http://www.bhddh.ri.gov)

**Main Phone:** 401.462.3421

**Español:** 401.462.3014

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# Home and Community Based Services (HCBS) Final Rule Guidance for Implementation

## Introduction

### How must your services change?

If you are a service provider who serves multiple consumers in the same location, these services must not isolate individuals from the community. The Final Rule requires that settings be integrated and support full access to the community. As a provider, you may need to modify where and how your services are delivered to meet the HCBS Final Rule. Policies and program designs may need to be changed, and staff training may be necessary to assure understanding of the new standards.

## Requirements for All Settings

### Integration

The Final Rule requires that the setting is integrated in and supports full access to the greater community for people who receive HCBS. This includes providing opportunities to seek employment and work in competitive integrated settings, maintain personal relationships, attend community events, join community groups, control personal resources, and receive services in the community to the same degree of access as people who do not receive HCBS.

Providers must not have rules, services, or support delivery practices that restrict or obstruct community access. Providers must also ensure service and support practices do not create an environment that is institutional in nature.

To engage with the person and the support team, the provider should use person-centered thinking to:

- Identify, develop, and make available information on transportation options for individuals.
- Assist individuals with developing meaningful relationships with other members of the community.
- Honor relationships with natural supports which individuals develop on their own.
- Support individuals in their participation in faith communities.

Of course, this is not an exhaustive list. There are countless ways to support individuals in community integration, and these ways are determined through person-centered thinking.

## Frequently Asked Questions About Integration

### 1. How can a rural setting meet this requirement?

Integration into the community will look very different in Chepachet than it will in Warwick or Providence. A very rural setting may have fewer opportunities for people to participate in community events or gatherings, but this is also true for the general public. The key is to be sure people have the same access to the community as others who live in that rural setting.

### 2. Is integration different for everyone?

Yes. Each person may have different needs and desires. Providers should address individual needs and desires and find a way to help every person meet those needs and desires to the greatest possible extent. A person's strengths and barriers are different as well, so integration looks different for everyone.

### 3. What are the expectations for day providers regarding "individual community opportunities?" Do you expect us to provide one-on-one community activities?

Day service providers (including adult day, day training & habilitation, prevocational activities, and structured day services) are not required to support a person with one-on-one community access unless aligned with assessed needs of individuals. However, the provider should talk to individuals about their likes, dislikes, and interests and make sure they have opportunities to participate in activities that match their preferences with people of their choosing, whether those others are also receiving services from the same provider. Providers should also share community activity information to raise awareness of and access to the broadest array of activities that may occur outside the setting. It is not an acceptable practice for providers to offer only on-site activities or only bring community members into the DDO setting (i.e., "reverse integration"). It is also not acceptable to concentrate group services or activities in community establishments that could hinder or limit desired integration with other community members.

## Sample policy language

Policy: Integration with the broader community

(Provider) will ensure that the setting is integrated in and supports full access of individuals to the greater community, including opportunities to seek employment and work in competitive integrated settings, engage in community life, control personal resources, and receive services in the community, to the same degree as individuals not served by (provider).

(Provider) will assist individuals in accessing transportation according to the individuals' needs.

(Provider) will support individuals in becoming involved in community groups and community activities as desired by the individual.

(Provider) will assist individuals in identifying and building natural supports in the broader community (friends, organizations, businesses, other service providers, family members, peers, etc.) according to the individual's desires and interests.

## Setting Selection

The Final Rule specifies that a basic quality of an HCBS setting is that it is chosen by the participant as a place to receive service(s). If a participant has not freely chosen a setting, then HCBS funding to that setting is at risk. This general requirement of setting selection applies to all HCBS provider settings, and it ensures that participants are aware of their options and have an opportunity to select the settings where they receive HCBS services. In the case of residential settings, the Rule also requires that relevant information about the participant's selection of their current residence be documented in the participant's ISP.

Participants' options must not be limited to settings which are "disability-specific" (for example, a setting which is only for people with autism, or only for people with disabilities). Participants are free to choose such a setting, but they also are free to choose settings which are **not** disability-specific. The principle of setting selection, then, requires that the options presented to participants include settings for people with varying disabilities and/or people without disabilities.

The setting selection requirement also means that participants can choose service settings independently of their residential setting choice. Residential settings provide certain services that are inherent in those settings, but a participant must not be required to choose their residential provider's day program, for example, as a condition of living in the residence. Similarly, a participant in a shared living arrangement (SLA) is free to choose a day service setting which meets their needs and desires, even if that choice entails a change in the participant's daily schedule. In short, a participant has the freedom to elect, receive, and deny services without risk of eviction from their residence.

## Frequently Asked Questions About Setting Selection

### **1. What if a participant would receive the best support in a disability-specific setting, but they are choosing a different setting?**

Participants need to make informed choices when they are selecting service settings. To do this, they need to know **all** their options and the potential benefits and drawbacks of those options. Therefore, the first step is to make sure the participant is well-informed. Visiting settings is a very important way of getting information, so the participant should visit as many setting options as possible, including disability-specific settings if the participant desires. In the end, however, the choice of setting is the participant's.

The point of the Final Rule regarding disability-specific settings is that participants should not be “assigned” to such a setting based only on diagnosis or type of disability. Participants must have other options, and those options must include settings where people of varying disabilities, or no disabilities at all, receive services.

**2. If a participant has a Shared Living Arrangement, can they choose an integrated day setting with a variable daily schedule?**

Yes. A participant is free to choose day services that meet their needs, desires, and preferences, even if those services create challenges in daily scheduling at their residence. Providers and participants are encouraged to work together and with the participant’s Social Case Worker and Support Coordinator to address any scheduling challenges and work toward a resolution that aligns with the participant’s interests.

**Sample policy language**

Policy: Setting selection

(Provider) will encourage participants to ask questions about their setting options, both before and after they accept (provider’s) service(s).

(Provider) will encourage participants to visit settings as part of their informed decision-making process, both before and after they accept (provider’s) service(s).

(Provider) will provide participants and their support teams with regular opportunities for feedback regarding settings, services, and service providers.

(Provider) will regularly inform participants and their support teams how to request a different setting and/or change current services or supports.

**The Rights Rule**

Another basic quality of an HCBS setting is participants’ rights of privacy, dignity, and respect, accompanied by freedom from coercion and restraint. Any violations of these rights and freedom jeopardize the setting’s HCBS status and funding, in addition to the ethical and regulatory implications of the violations.

The right to privacy extends to all participants, regardless of their communication abilities or intellectual function. Preserving the privacy of participants, who naturally have varying needs and abilities, requires individualized approaches and supports. The tendency to overlook the right to privacy of participants with more significant needs can develop over time, since these participants often cannot verbalize their privacy needs. All measures must be taken to ensure that this does not happen.

Physical privacy during personal care, privacy of personal health information, privacy in personal living quarters, and privacy in daily communication are all included in the general right to privacy.

The rights to dignity and respect, as well as the definitions of dignity and respect, are similar. Dignity is defined as the state of being worthy of honor. Respect is defined as due regard for the feelings, wishes, rights, or traditions of others. The rights to dignity and respect must be upheld in all settings.

Participants are treated with dignity and respect when their opinions and contributions are taken seriously; when agency staff speak to them as equal partners and ask them for input; and when their requests for services or supports are addressed directly and honestly and accommodated whenever possible. An important question that should be in the minds of every agency staff person in every interaction is whether that interaction is dignified and respectful to the participant.

In the Final Rule, the rights to privacy, dignity and respect are accompanied by freedom from coercion and restraint. Coercion is defined as using threats, intimidation, and/or authority to force compliance from a person, even when it is against the person's best interest. Restraint is defined as restricting the movement of the whole or a portion of a person's body to control their physical activities. Restraint comes in different forms, such as physical and chemical.

The Final Rule forbids coercion and restraint in HCBS settings, except specific restraints that are used as part of an approved behavioral support plan. The process for instituting such a plan is set forth in the RI Rules and Regulations for Developmental Disability Organizations (section 1.12.5ff).

## **Frequently Asked Questions About the Rights Rule**

### **1. If a participant is nonverbal or has limited expressive or receptive communication abilities, how does the rights rule apply to them?**

The rights rule applies to all participants completely and equally, regardless of communication or cognitive ability. If a participant is nonverbal or has limited communication abilities, those who interact with them must take extra measures or do things differently to respect these rights. For example, closely observing the participant's body language or other physical cues is necessary to determine if they might be uncomfortable in the interaction. For those participants who have legal guardians, the rights of privacy, dignity, and respect and freedom from coercion and restraint are assumed by the guardian on behalf of the participant, and the guardian must ensure that these rights are respected.

## **2. If a participant is abusive to staff persons or otherwise violates their rights, how should the staff respond?**

The staff should respond in the same way they respond to every other participant – with privacy, dignity, and respect, and without coercion or restraint. However, as stated above, behavioral support plans which follow regulatory requirements and may include restraints are sometimes necessary to preserve physical and emotional safety for all involved. Such plans are strategies to promote and protect the well-being and rights of participants by providing a structured response to prevent further abuse. Respecting an abusive participant’s rights can be very challenging at times, but it is required of everyone who has contact with the participant.

## **3. Can participant rights be restricted in behavioral support plans?**

Generally, no. The Rhode Island Rules and Regulations for DDOs require that all behavioral supports and treatment conform to and abide by Rhode Island laws regarding participant rights. The Rules and Regulations identify several ways that general behavioral supports must respect participant rights, such as the requirements that:

- Supports designed to reduce the frequency of inappropriate behaviors are used only in conjunction with positive supports designed to strengthen adaptive and appropriate behaviors.
- Supports are provided according to behavioral intervention policies and procedures.
- The development of supports is informed by the results of functional behavioral assessments.

In the case of behavioral support **plans**, participant rights are preserved in several ways as well. These include:

- The decision to develop a plan is made by the participant and their support team
- The plan is developed only by a licensed clinician and is based on assessed clinical needs
- A plan which is not written must not be administered
- Written consent by the participant or responsible party is given before the plan is administered, and annually thereafter.

The Rules and Regulations stipulate that behavioral support plans which restrict a participant’s rights “shall be used only to address specifically identified extraordinarily difficult or dangerous behavioral problems that significantly interfere with appropriate behavior and/or the learning of appropriate and useful skills, and/or that have seriously harmed or are likely to seriously harm, the individual or others.”

The Rules and Regulations further stipulate that restrictive interventions will be allowed “only after a review and approval by clinicians, families, guardians, and the Human Rights Committee.”

This process must ensure that “clinicians have exhausted other less restrictive interventions” and that “the likely benefit of the procedure to the participant outweighs its apparent risk of life safety.”

Some restrictive interventions are prohibited under any circumstances. These include:

- Using law enforcement in lieu of a clinically approved therapeutic emergency intervention or behavioral treatment program.
- Behavioral interventions used for the convenience of the staff.
- Behavioral interventions used for any reason except emergency protocol.

#### **4. What about the right to privacy of “personal health information” under HIPAA?**

Personal health information (PHI) has two basic components – an individual’s identifying information (such as name or SSN, but also other information that is a reasonable basis for identifying an individual) and health information. When identifying information is linked to health information, it is considered PHI. For example, “John Doe has high blood pressure” is PHI.

Health information, according to the [U.S. Department of Health and Human Services](#), relates to:

- The individual’s past, present, or future physical or mental health or condition;
- The provision of healthcare to the individual; or
- The past, present, or future payment for the provision of healthcare to the individual.

PHI must be kept private and must not be disclosed except for specific reasons and in specific circumstances. Information regarding a participant’s intellectual or developmental disability is considered PHI.

#### **Sample policy language**

Policy: Participant rights

(Provider) will ensure all participants’ rights of privacy, dignity, and respect and freedom from coercion and restraint at all times. (Provider) will utilize restraints only as a last resort; only as part of a written and approved behavioral support plan; and only in accordance with Rhode Island Licensing and Developmental Disability Organization regulations.

Each participant served by (provider) will be informed of their rights in a way they understand.

Staff of (provider) will discuss a participant’s personal and/or health information only in private and only for the purposes of providing support or treatment to the participant.

All participants at (provider) will have access to a telephone to make and receive private calls and to personal communication devices for private texts, email, or other personal communication.

All mail addressed to a participant of (provider) will be delivered to the participant's living quarters unopened. (Provider) staff will assist the participant with opening, reading, or replying to mail only when the participant has requested this assistance.

Participants of (provider) will have access to spaces for private conversations and/or spending time alone, when desired by the participant.

(Provider) will support participants' choices and preferences regarding their personal appearance, including but not limited to clothing and hairstyle, provided these choices and preferences preserve basic personal hygiene and safety.

Note: The above policies are only a sampling and are based upon the HCBS Final Rule specifically. Providers are responsible for ensuring that their policies are consistent with both the HCBS Final Rule and with the participant rights identified in section [1.26 of the Rhode Island Licensing regulations](#).

## Autonomy

Another basic quality of an HCBS setting is that it “optimizes, but does not regiment, individual initiative, autonomy, and independence in making life choices...” Life choices include but are not limited to choices of daily activities, physical environment, and with whom to interact. Choice of daily activities and with whom to interact are self-explanatory; choice of physical environment refers to the freedom to go places of one's choosing.

“Optimizes” is a key word in the above statement. The setting optimizes participants' autonomy by intentionally creating an environment without restrictions on or control of participants' decision-making, as a matter of course. When restrictions or control are necessary, they are instituted only as a last resort and only according to regulations and applicable laws (for example, legal guardianship laws).

Optimizing, and not regimenting, a participant's autonomy often leads to a higher level of trust between provider and participant. Increased trust, in turn, often leads to better outcomes in achievement of participants' goals.

### Frequently Asked Questions About Autonomy

#### 1. How can a participant's autonomy be optimized when serious safety concerns exist?

The point of the Final Rule regarding autonomy is that participants must be afforded autonomy as a basic freedom, like anyone else. When the exercise of autonomy creates serious safety

concerns for the participant or others, then the participant may lack the safety awareness and self-preservation skills that others possess. In that case, supports are needed in that area. However, those supports must be provided **only to the degree that they are necessary** to prevent serious harm. In that way, autonomy is optimized.

**2. What about participants who have criminal histories or propensities?**

The same point applies to those participants. Supports or restrictions must be provided only to the degree that they are necessary, and thereby autonomy is optimized. When a participant has legal restriction(s) that have been imposed by a court of law, those restrictions are necessary for the participant. The participant's autonomy is still optimized even when legal restrictions which are necessary for the participant are enforced.

**3. Do the choices to marry and have children fall within the life choices being discussed here?**

Yes, those choices are included. They are important examples of life choices. However, like anyone else, a participant needs to be informed and, if necessary, counseled in making those life choices. Presenting the participant with resource ideas and suggesting trusted individuals for obtaining that information and counseling are ways that a provider can optimize the participant's autonomy.

**4. Does autonomy mean that the participant should be allowed to do whatever they want?**

Essentially, yes. Autonomy, however, does not preclude a participant from following rules established by their communities or living with the natural consequences of their choices and behavior. The role of the provider is to guide the participant in exercising their autonomy in beneficial ways, focusing upon the participant's goals, strengths, and needs.

**Sample policy language**

Policy: Participant autonomy

(Provider) will optimize participants' autonomy in making life choices by encouraging participants to make their own decisions whenever possible. Life choices include, but are not limited to, choices of daily activities, physical environment, and with whom to interact.

(Provider) will support participants in making their own decisions by providing information and guidance, suggesting resources, and facilitating access to the community and to natural supports.

(Provider) will preserve participant autonomy in situations in which others are attempting to make decisions for participants without legal authority to do so.

(Provider) will give priority to a participant's personal preferences over a guardian's or other support person's preferences, unless the participant's preferences pose a documented, serious risk to the participant's basic health or safety.

## Choice in Services and Supports

Another basic quality of an HCBS setting is that it “facilitates individual choice regarding services and supports, and who provides them.” The role of the provider is to **facilitate** choice, as opposed to **making** choices about services and supports on behalf of the participant. It is sometimes very easy to make these choices on behalf of participants without thinking about it. In the writing of an ISP, for example, some services and supports are added to the plan almost automatically, because the participant “obviously” needs that support. When an ISP is written in that way, the participant’s choice and voice are lost.

One way to facilitate choice of services and supports is to identify options to the participant and explain them when necessary. Creative thinking and identifying multiple options are important in this process. When a participant has options, they have a greater sense of control in their services and supports, and, as a result, they often have better outcomes. In addition, identifying options is a way of honoring the participant’s rights to dignity and respect.

The participant must be given choice about services and supports, but also about *who provides* the services and supports. “Who” refers to agencies as well as individual staff members. If a participant feels uncomfortable around a staff member, or if they prefer direct support professionals of only one gender (such as “women only”), those choices must be fulfilled whenever possible. Also, if a participant chooses natural (unpaid) support persons for all or part of their support, and the support persons are committed to the plan as well, those choices are just as valid as the choice of paid staff.

### Frequently Asked Questions About Choice in Services and Supports

**1. What if a participant is making a choice about a provider or staff person that is based on inaccurate information or a misunderstanding of the options?**

The provider’s role is to facilitate choice, which includes providing accurate information or an alternative perspective on the options. The provider should not hesitate to provide information or perspective to the participant, assuming the participant is receptive to it. In the end, however, the choice is the participant’s.

**2. What if a participant is unable to make or communicate choices?**

Again, the provider’s role is one of facilitation. If the participant has a legal guardian, the provider should give the guardian as many options as possible and encourage the guardian to identify options on their own. If the participant does not have a guardian, services and supports which are consistent with choices the participant has made in the past or which are aligned with known interests or preferences should be provided. Whether the participant has a guardian or not, their support team always should be looking for any indication from the participant that they are satisfied or dissatisfied with a service or support.

### **3. What if a participant is making a choice that puts them at risk for harm?**

While most choices of services or supports do not significantly affect a participant's risk for harm, some choices do. For example, a participant who lacks basic safety skills in the community but chooses to learn how to use public transportation independently may be at increased risk for harm. An appropriate provider response would be to identify other options and provide information and perspective, as discussed above. If the participant is not interested in other options, then the provider should initiate a conversation about risk mitigation. How can the risk involved in that service or support be reduced? The provider should give the participant as much responsibility as possible in identifying ways to reduce the risk and should involve other support team members in the planning process if the participant desires.

It is important to recognize that the choice of a service or support must be distinguished from a general life choice which is inherently risky. For some general life choices, no amount of negotiation or planning will reduce the risk to an "acceptable" level. For example, a participant who chooses to engage in legal gambling has the freedom to make that choice, despite the financial risks. A participant's support team may be adamantly opposed to a participant's life choice, but in the end, the participant's freedom to make such a choice must be respected.

### **4. What should be done if a participant's choice of support person or gender of support person cannot be accommodated at the time?**

The first response should be to offer help to the participant in identifying other acceptable options. The participant, however, should take the lead as much as possible. Considering natural supports would be important in identifying options. As soon as the support person of choice is available, the provider is responsible for honoring the participant's choice. In cases where the choice is not just a preference, but a requirement based on a behavior plan or risk, the provider needs to ensure that procedures are in place to accommodate the need.

#### **Sample policy language**

Policy: Choice in services and supports

(Provider) will facilitate participants' choice of services and supports by providing information and guidance to participants; by identifying viable options with the participant; and by offering the provider's perspective, if desired, to assist the participant in making an informed choice.

For those participants with legal guardians or other legal decision-makers, (provider) will facilitate choice of services and supports by the legal decision-maker in the same manner as by a participant with no legal decision-maker.

For those participants who are unable to make or communicate choices about services or supports and have no legal guardian, other legal decision-maker, or advocate, (provider) will

provide services and supports that are aligned with the participant’s history of chosen services and with known interests and preferences.

For all participants, (provider) will accommodate requests or preferences for particular support persons or a particular gender of support person as much as possible. If it is not possible to accommodate the participant’s request or preference at a given time, other options will be identified with the participant to assist them in making a choice.

If a participant chooses a service or support that would significantly increase their risk for harm, (provider) will assist the participant to identify other service or support options. If no other option is desired by the participant, (provider) will engage the participant in planning risk mitigation strategies which are acceptable to the participant and their support team.

If a participant expresses a desire to receive services or supports from a different provider, (provider) will assist the participant by facilitating the choice of a different provider to the extent desired by the participant.

## **Additional Requirements for Residential Settings Owned or Controlled by Providers**

### **Lease/Residency Agreement**

The Final Rule requires that a living unit be “a specific physical place that can be owned, rented, or occupied under a legally enforceable agreement by the individual receiving services...”

Individuals must have a lease or other legally enforceable residency agreement outlining their protections against eviction/discharge/transfer, with the appeal process explained. The lease/agreement must be signed by the individual or legally responsible party and by the residential provider.

In addition to eviction/discharge/transfer information, a residency agreement is also needed to document the rights and responsibilities of both parties in regard to the individual’s residency at the setting.

Once signed and completed:

- The person and legal representative must receive a copy of the agreement
- The provider/landlord must maintain a copy in the person’s record.

**For provider-owned properties**, legal advice should be sought in the formulation of residency agreements.

**For State-owned properties**, participants will have the same protections as participants in provider-owned properties.

**For Shared Living Arrangements**, participants will have the same protections as tenancy, in a manner consistent with a month-to-month lease, wherein the mutual satisfaction of the living arrangement is to be evaluated through the Agency’s oversight and in conjunction with the State’s 30-day notice policy for termination of services.

### **Sample policy language**

Policy: Residency Agreement

(Provider) and an individual participant/responsible party will enter into a legally enforceable lease/residency agreement at the time the residency begins.

(Provider) will comply with State and HCBS requirements for residency agreements.

(Provider) will ensure that all individuals admitted to the residence, or their legally responsible party, sign a lease/residency agreement prior to or at move-in. Any modification to the signing of an agreement will not be made without:

1. Identifying a specific and individualized assessed need.
2. Documenting positive interventions and supports and less intrusive methods which were unsuccessful.
3. Documenting a clear description of the intervention that is directly proportionate to the assessed need.
4. Regularly reviewing data to measure the ongoing effectiveness of the modification.
5. Establishing time limits for periodic reviews of the modification to determine if it is still necessary.
6. Ensuring informed consent and lack of harm to the individual from the modification.

### **Privacy in Living Unit**

The Final Rule also requires that each individual have privacy in their living unit. This requirement is met in three ways, and all three ways must be present:

#### **I. Lockable entrance doors**

The federal requirement for door locks is intended to support a participant’s personal privacy. While participants do have the right to choose not to lock their doors, the participants’ choice does not remove the provider’s responsibility to provide locks on living unit doors. Door locks simply allow the participant to exercise their right to privacy and personal choice.

Staff in each residential setting should always knock and receive permission prior to entering a participant's living space. If not already in place, the setting should create a policy requiring this practice, which is intended to respect participants' right to privacy. Each setting should have policies regarding door locks and participant privacy, along with related staff trainings, and indicate how compliance is maintained.

## **Frequently Asked Questions About Lockable Entrance Doors**

### **1. Where are door locks required?**

Depending on the setting, a participant's "living unit" may be their own apartment, studio, or bedroom. Door locks are required on all entrances into the participant's personal living space. In the case of shared apartments where each participant has their own bedroom, each bedroom door must be lockable.

Alternative lock/key mechanisms may be utilized if they more appropriately meet the needs of the individual. Some examples may include digital keypads, finger-print access, dongle/Bluetooth, etc.

### **2. Does a provider need to have a written policy related to participant access to keys?**

Yes. Each residential setting must have a policy concerning the distribution of keys to participants. The policy should address how participants will receive keys upon admission, the guidelines for participants' use of keys while living in the setting, and the process for participants' return of keys upon discharge.

If the participant has been assessed as not having the physical or cognitive ability to utilize a lock/key, this must be documented within the participant's Individual Service Plan (ISP), indicating how the participant's living unit will be kept secure and private.

### **3. Is it acceptable for a provider to not provide a key to the participant if the participant's legal representative has given consent verbally or in writing?**

In general, no. With respect to a participant's personal choice and privacy, the participant must be involved, to the extent they are capable, in any decisions regarding their personal possessions and use of a key. If a restriction on the participant possessing a key is necessary, a modification is required (see the section on Modifications in this guide, or below in the Sample Policy Language). If the participant does not have possession of a key, they may still lock their door when leaving the setting in order to safeguard belongings and ensure privacy.

### **4. Does a provider need to have a written policy related to staff access to locked living units?**

Yes. Providers must have a policy specifying which staff members have the ability to enter a living unit that is locked. The policy should state that the staff will enter a locked living unit only under circumstances agreed upon by the participant/guardian, and the circumstances must be

documented in the participant's Individual Service Plan. The policy must also indicate how this practice will be maintained.

**5. What about a setting that has multiple living units with unique keys?**

Settings with multiple living units should consider having all living unit door locks keyed so that staff may use a master key as opposed to two or more different keys. This ensures dedicated keys for each participant's living unit while also allowing staff to have access to all living units with one master key.

**6. What should a provider do when a participant cannot manage a key?**

If a participant is prone to misplacing the key, the participant still has the right to lock their living unit in order to safeguard belongings and ensure privacy. In consultation with the participant and their support team, the provider may include a procedure in the participant's ISP to hold the key in a *safe place* so the participant can then use the key to enter their living unit.

**7. If roommates differ in their ability to manage a key, what should be done?**

Each setting should develop a plan that accommodates the different abilities of participants. Suggestions include storing a key in a safe place or allowing staff to lock and unlock the door for those participants who cannot manage a key. If either procedure is used, it must be documented in the participant's ISP.

**8. If the participant or guardian indicates that they don't want a lock, do I need to install one anyway?**

Yes. All living unit doors must have locks installed and available for use.

**Sample policy language**

Policy: Door locks

(Provider) will ensure that all individuals have living units with entrance doors lockable by the individual. All individuals will receive a key to their entrance door when they move in to (provider). Individuals will use this key to lock and unlock their living unit door as they choose.

(Provider) will ensure that all individuals who need assistance in using their key successfully will be supported through an individualized procedure which will be part of the Individual Service Plan.

(Provider) will ensure that all individuals who are assessed and determined to not have the ability to use a key, even with individualized assistance, are supported in keeping their living units secure and private. This support will be described in detail in the Individual Service Plan. Any modifications to lockable entrance doors will not be made without:

- identifying a specific and individualized assessed need.

- documenting positive interventions and supports and less intrusive methods which were unsuccessful.
- documenting a clear description of the intervention that is directly proportionate to the assessed need.
- regularly reviewing data to measure the ongoing effectiveness of the modification.
- establishing time limits for periodic reviews of the modification to determine if it is still necessary.
- ensuring informed consent and lack of harm to the individual from the modification.

(Provider) will ensure that only appropriate staff have a master key or dedicated keys to living unit doors of all individuals in the residence. Appropriate staff are defined as (list of titles; as few as possible and still maintain safety, security, and privacy).

(Provider) will ensure that staff enter an individual's locked living unit only under circumstances agreed upon by the individual/guardian. (Provider) will also ensure that these agreed-upon circumstances are documented in the participant's ISP. The integrity of this practice will be maintained through education of staff upon hiring and at regular intervals thereafter and conferring with the individual and/or responsible party as needed.

(Provider) staff will protect the privacy of individuals by not entering the individual's living unit without first knocking on the door and obtaining permission from the individual to enter the living unit. If the individual is not readily able to express permission, the staff person will, as much as possible, ensure that the individual is aware of the staff person's presence and intention to enter the living unit and monitor the individual's reaction for signs of their privacy being violated.

## **II. Choice of Roommates**

The Final Rule specifically mentions roommates only once – “In a provider-owned or controlled residential setting...individuals sharing units have a choice of roommates in that setting.”

Providing this choice is one way of ensuring that individuals have privacy in their living unit. Individuals should be supported in exploring every possible residential option, and when the option chosen is sharing a room, the power to choose extends to the choice of a roommate.

### **Frequently Asked Questions About Choice of Roommates**

#### **1. How can a provider offer choice of roommate to every individual who resides in a shared room?**

Often, choices of roommate are limited, but the individual still should choose. Making an

informed choice requires that the individual meet their prospective roommate(s) and discuss sharing a room before making a choice. This applies to individuals already living in the residence and those who are moving in. The provider's opinion about prospective roommate arrangements would also be important to individuals in making an informed choice. The ISP must document how roommate choice was provided to and exercised by the individual.

**2. Will Providers be required to install privacy partitions in shared bedrooms?**

No. The Final Rule does not require installation of privacy partitions.

**3. Does the Rule allow housemates in a group home to choose who is admitted to their home?**

Providers may exercise discretion in accepting new individuals in a group home. Providers are encouraged, however, to engage existing housemates in the selection process. (Housemates are individuals who reside in the same home.)

**4. As a provider who has many shared bedrooms, do I have to convert to all private rooms?**

No, providers are not required to convert all shared rooms at this time. If individuals who are sharing a bedroom want a private room, providers should explore options to accommodate the request, such as converting a shared room to private; determining if any changes in room arrangements among the other participants are likely to occur; or looking for a private room in a different residence.

**Sample policy language**

Policy: Roommate selection

(Provider) will ensure that individuals sharing units will have a choice of roommates. In all but the most extreme cases, choice of roommate will be provided prior to move-in and will entail a visit to the residence in which the prospective resident and roommate are introduced to one another and make a mutual decision to share a unit.

To the fullest extent possible, (provider) will ensure that a prospective resident has freedom of choice in selecting a unit within the residence.

Any modification to choice of roommates will not be made without:

- Identifying a specific and individualized assessed need.
- Documenting positive interventions and supports and less intrusive methods which were unsuccessful.
- Documenting a clear description of the intervention that is directly proportionate to the assessed need.
- Regularly reviewing data to measure the ongoing effectiveness of the modification.

- Establishing time limits for periodic reviews of the modification to determine if it is still necessary.
- Ensuring informed consent and lack of harm to the individual from the modification.

### III. Freedom to furnish the living unit

The third way of ensuring privacy in a living unit is by giving the participant the freedom to furnish or decorate the living unit as they choose. However, any rules or responsibilities about furnishing of living units must be included in the terms of the lease or residency agreement and must be respected by both the participant and the provider.

#### Sample policy language

Policy: Furnishing of participant living spaces

(Provider) will ensure that all individuals have the freedom to furnish/decorate their living unit as they choose, within the terms of the lease or residency agreement.

Any modification of the freedom to furnish the living unit will not be made without:

- Identifying a specific and individualized assessed need.
- Documenting positive interventions and supports and less intrusive methods which were unsuccessful.
- Documenting a clear description of the intervention that is directly proportionate to the assessed need.
- Regularly reviewing data to measure the ongoing effectiveness of the modification.
- Establishing time limits for periodic reviews of the modification to determine if it is still necessary.
- Ensuring informed consent and lack of harm to the individual from the modification.

### Schedule Control

One of the most important things to most people is having control, particularly control over one's own life. Schedule control is integral to control over one's own life. How we spend our time speaks volumes about who we are as people. However, with control comes responsibility. The people in the individual's life, including service providers, must support the individual in exercising schedule control responsibly, but as fully as possible.

**1. Does the Final Rule allow for curfews for individuals?**

Yes, as long as the individual makes an informed and free choice to have a curfew. Otherwise, curfews are not in line with the Final Rule’s concept of schedule control.

**2. Doesn’t schedule control make one-to-one staffing necessary for almost every individual?**

One-on-one staffing should be provided only if it is based on an individual’s assessed needs. Schedule control is possible without one-to-one staffing for most individuals by eliminating regimented schedules; helping individuals develop and utilize natural supports; adjusting staff responsibilities more toward a coaching approach; and fostering a culture of person centeredness through training and support. Sometimes one-on-one staffing is necessary, but schedule control does not require it for most individuals.

**Sample policy language**

Policy: Schedule and activity control

(Provider) will optimize individual initiative, autonomy, and independence in making life choices, including but not limited to choices of daily activities. (Provider) will support individuals in building an individualized schedule, including structured time and unstructured, “free” time.

(Provider) will offer individuals freedom and support to control their personal schedules and activities within the individuals’ congregate living setting. Any modifications to schedule control will not be made without:

- Identifying a specific and individualized assessed need.
- Documenting positive interventions and supports and less intrusive methods which were unsuccessful.
- Documenting a clear description of the intervention that is directly proportionate to the assessed need.
- Regularly reviewing data to measure the ongoing effectiveness of the modification.
- Establishing time limits for periodic reviews of the modification to determine if it is still necessary.
- Ensuring informed consent and lack of harm to the individual from the modification.

(Provider) will create a residence schedule that promotes independence and individuality and that reflects the interests of the individuals who live at (provider).

## Access to Food

One important area of schedule control is an individual's right to access food of their choice at any time of their choosing. Participants who live in provider-owned, controlled, or operated settings must have access to food *at any time* and must be provided a place to store snacks (e.g., in the participant's bedroom or the setting's kitchen). Snacks may not be limited to specific times, places, or types of snacks. Providers must support participants in regard to access to food according to each participant's needs, preferences, and goals.

Examples of support may include:

- Assisting with budgeting and shopping for snacks.
- Assisting with safe storage of snacks.
- Providing alternative choices when a main meal option is not chosen or when the participant eats a meal outside of a standard mealtime.
- Assisting with healthy food choices without controlling or discounting the participant's preferences.

### Frequently Asked Questions About Access to Food

**1. I provide services to a person who makes poor food choices. Does every individual have to have 24-hour access to food?**

A provider may not limit a person's access to food unless there is an identified and documented risk to the person's health or safety that requires a modification. (See sample policy language below, or the Modifications section of this guide.) A provider may not limit a person's access to food based on it being deemed "junk food"; on the provider's personal beliefs; or on the provider's opinion that an individual's body weight is unhealthy.

**2. If one person in a home has a modification in place restricting their access to food, and the modification includes locking the refrigerator and pantry, are all other participants in the home subject to the same modification?**

No. All other participants in the home must have a way to obtain food at any time, whether by having their own key to kitchen cabinets; having private storage in their own locked bedroom; or utilizing some other arrangement which respects the right to food access at any time. An arrangement in which the only way any participant has access to food is through a staff member must be used only as a last resort and with extreme caution. In that case, staff members and participants must be thoroughly and routinely educated about the freedom of participants to have access to food at any time.

### **3. May a participant eat meals and/or snacks in their room or another place of their choosing?**

Yes. An important component of the Final Rule is that individuals have the same prerogatives in regard to food as people who do not receive HCBS services. A provider may be rightfully concerned about cleanliness, safety, and proper storage of food in an individual's room, but the freedom to consume food outside the dining room overrides these concerns. The way these concerns are approached is important. Seeing them as an opportunity to help the individual learn to meet their own needs in regard to cleanliness and safety is the most beneficial way. In cases where the individual requires staff supervision or physical assistance while eating for the purpose of safety, a plan to address this risk with respect to the individual's desires should be developed and documented in the ISP.

#### **Sample policy language**

Policy: Access to food

(Provider) will ensure that all individuals have access to food of their choosing at any time. Any modification to food access will not be made without:

- Identifying a specific and individualized assessed need.
- Documenting positive interventions and supports and less intrusive methods which were unsuccessful.
- Documenting a clear description of the intervention that is directly proportionate to the assessed need.
- Regularly reviewing data to measure the ongoing effectiveness of the modification.
- Establishing time limits for periodic reviews of the modification to determine if it is still necessary.
- Ensuring informed consent and lack of harm to the individual from the modification.

(Provider) will ensure that all food is stored in a manner that allows individuals access at all times but that also promotes food safety. (Provider) staff will support individuals in accessing food responsibly, both in common areas and individual living units.

Participants who reside at (provider) will have the freedom to decide what meals are served and what snacks are available in the residence. (Provider) staff will support participants, both informally and formally, in making these decisions (for example, holding a regular meeting to set the menu). Staff will also encourage participants to be involved in dining in other ways of their choosing, such as assisting in grocery shopping.

(Provider) staff will offer meals to individuals at specific times to promote a sense of community among all individuals who wish to dine together. Individuals at (provider) are free to join others at set mealtimes or dine at other times and/or other places of their choosing.

## Visitors

Individuals must be allowed to have visitors of their choosing at any time. Having visitors helps individuals develop personal, private relationships, just like someone who does not receive HCBS services. This requirement does not mean that other individuals' needs for quiet and safety in the residence should be disregarded. Common courtesy and respect are to be maintained by everyone in the residential setting.

The requirement, though, is intended to ensure that individuals have freedom in regard to visitors and relationships in their home. To comply with this requirement, providers will ensure that:

- Individuals can choose their visitors and visit times, with no restrictions.
- Individuals may have overnight guests.
- Individuals and their guests may visit in any area of the residence, as long as other participants' rights are respected.
- Participants and their visitors have privacy during visits.

The setting may establish procedures to ensure the safety and welfare of people who live and work there. For example, providers may request that visitors notify staff that they are present in the residence. However, the procedure must not restrict visitors unnecessarily for the convenience of staff or restrict the individual's freedom of association with whomever they choose.

### Frequently Asked Questions About Visitors

#### **1. Can a provider require that participants get their permission to have particular visitors at particular times?**

No. This arrangement is contrary to the Final Rule's requirement that individuals have visitors as they choose.

#### **Sample policy language**

Policy: Visitors to residential settings

(Provider) will ensure that individuals are able to have visitors of their choosing at any time, which optimizes their independence in making life choices and reinforces their right to privacy. Any modifications to this provision will not be made without:

- Identifying a specific and individualized assessed need.
- Documenting positive interventions and supports and less intrusive methods which were unsuccessful.
- Documenting a clear description of the intervention that is directly proportionate to the assessed need.
- Regularly reviewing data to measure the ongoing effectiveness of the modification.
- Establishing time limits for periodic reviews of the modification to determine if it is still necessary.
- Ensuring informed consent and lack of harm to the individual from the modification.

Visitors to (provider) will have access to all common areas of the home and the living unit of the individual who is being visited, as long as the safety, security, and rights of all individuals in the home are respected.

## Physical Accessibility

**NOTE: The requirement of physical accessibility to the residence cannot be modified.**

All HCBS residential buildings must be physically accessible to the participants who live there. In the case of a current participant who becomes unable to enter the building, the preferred option is to accommodate the participant through adaptive equipment or other accommodation. Physical accessibility to the building is a requirement for admission to a residential setting, so this factor must be addressed during the assessment process. In this case, too, accommodation of an individual's accessibility needs is the preferred approach, in order to provide the individual with as much choice as possible in selecting a residence.

### Sample policy language

(Provider) will determine through a full assessment process whether a prospective resident is physically able to enter the residence. If any barriers to access exist for the individual, the preferred course of action will be to develop a plan to address the individual's accessibility needs. This plan will be communicated to the prospective resident and their support team during the selection process.

(Provider) will develop a plan to address any barriers to building access for any current resident who becomes unable to physically access the residence. This policy is intended to preserve the option of remaining at the residence as the preferred option and to provide as much choice of residential setting as possible to the participant.

## Modifications

To review, the HCBS Final Rule identifies five conditions that provider-owned or controlled residential settings must meet, in addition to the requirements for all HCBS settings. These additional conditions are: 1) the living unit must be a “specific physical place that can be owned, rented, or occupied under a legally enforceable agreement;” 2) each individual must have privacy in their living unit, reinforced by lockable entrance doors, choice of roommate, and freedom to furnish the living unit as they choose; 3) each individual must have the freedom and support to control their own schedules, and have access to food at any time; 4) each individual must be able to have visitors of their choosing at any time; and 5) the setting must be physically accessible to the individual.

The Final Rule does allow for modifications of these conditions, if necessary. A modification may be necessary if meeting one of these conditions puts the individual or others at serious risk of harm, for example. Modifications are allowed so that a provider can continue to serve an individual in a community setting as opposed to transferring them to a segregated, institutional setting. However, **physical accessibility to the residence is the one and only condition that cannot be modified.** Every participant must be able to physically access the residence.

Modifications can be necessary to allow “providers to serve individuals with the most complex needs in integrated community settings to ensure that the setting supports the health and wellbeing of the individual beneficiary and those of people around them.”

Any modification must consist of the following six elements:

- Identifying a specific and individualized assessed need.
- Documenting positive interventions and supports and less intrusive methods which were unsuccessful.
- Documenting in the Individual Service Plan a clear description of the intervention that is directly proportionate to the assessed need.
- Regularly reviewing data to measure the ongoing effectiveness of the modification.
- Establishing time limits for periodic reviews of the modification to determine if it is still necessary.
- Ensuring informed consent and lack of harm to the individual from the modification.

## Frequently Asked Question About Modifications

### 1. What is the consequence if an individual in a residential HCBS setting does not consent to a modification? Can the individual be permitted to remain in the residential setting without the modification?

An individual must provide informed consent prior to a necessary modification, and providers cannot implement a modification without such consent. The State and provider must use the person-centered planning process and alternative strategies that allow the individual the fullest self-determination and independence. If an individual continues to reside in the setting without the necessary modification, the State is still responsible for assuring the individual's health and welfare and implementation of services consistent with the person-centered plan. The State would therefore need to determine if it could assure the health and welfare of the individual if they continue to reside in the setting without the modification.

### Sample policy language

Policy: Modifications

(Provider) will ensure that every individual/responsible party has entered into a legally enforceable agreement with (provider) regarding occupancy of the living unit by the individual.

(Provider) will ensure that every participant has privacy in their living unit through the following means: 1. entrance doors lockable by the individual; 2. choice of roommate in shared living units; and 3. freedom to furnish/decorate the living unit as the participant sees fit, within the terms of the lease/residency agreement.

(Provider) will ensure that every participant has the freedom and support to control their own schedules, including access to food at any time.

(Provider) will ensure that every participant has the freedom to have visitors of their choosing at any time.

Prior to making any modification to any of the above-mentioned conditions, (provider) will ensure that the modification will consist of all the following elements:

- identifying a specific and individualized assessed need.
- documenting positive interventions and supports and less intrusive methods which were unsuccessful.
- documenting in the Individual Service Plan a clear description of the intervention that is directly proportionate to the assessed need.
- regularly reviewing data to measure the ongoing effectiveness of the modification.

- establishing time limits for periodic reviews of the modification to determine if it is still necessary.
- ensuring informed consent and lack of harm to the individual from the modification.

(Provider) will maintain documentation sufficient to demonstrate that the six elements of a modification are present during the time period that the modification is in place.