



HCBS Modifications and Supporting Individual Autonomy for Support Coordinators



Department of Medical Assistance Services
and
Department of Behavioral Health and Developmental Services

Housekeeping Tips

- Microphones are muted because of the size of the training.
- Enter all questions into the chat.
- Q&A document will be posted to the toolkit.
- Any questions we are unable to answer will be included in the Q&A document.
- This training is being recorded.

Purpose

The purpose of this training is to discuss the specific residential protections that are outlined in the HCBS Final Rule and the SC's role in any health & safety related modifications and ongoing monitoring of provider compliance

The Goal of the HCBS Settings Regulation

Individuals receiving Medicaid home and community based services must have every opportunity to live with the same rights, freedoms, and degree of self-determination, and have the opportunity to integrate within their community, as anyone not receiving Medicaid home and community based services. HCBS members must have the opportunity to live as freely and independently as you and me.

Home and Community Based Services

The Home and Community-Based Services (HCBS) settings regulations (previously known as the “Final Rule”) were published in the Federal Register on January 16, 2014; they became effective March 17, 2014.

The settings regulations were designed to enhance the quality of HCBS, provide additional protections, and ensure full access to the benefits of community living.

Competence / Incompetent

Often times individuals with disabilities are presumed incompetent.

However, adults with disabilities must be given the same opportunities for growth and failure as you or I. **This is how people grow.**

Presumed Competence

Presumed competence is a **strengths-based approach that assumes people with disabilities have the ability to learn, think and understand.**

This includes the ability to make choices (maybe even choices that their supports, natural and paid, disagree with), determine their own goals and be the person in charge of their life path.

HCBS Setting Basics: Recap

- Be integrated and support access to the greater community;
- Provide opportunities to seek employment and work in competitive integrated settings;
- Facilitate individual choice regarding services & supports and who provides them;
- Ensure an individual's rights of privacy, dignity, respect, and freedom from coercion and restraint;
- Be selected by the individual from among setting options, including non-disability specific settings;
- Participate in the person-centered planning process.

Additional Rights in HCBS Residential Locations

- Individuals should have a lease or other legally enforceable agreement;
- Privacy in room with lockable doors;
- Choice of roommates;
- Freedom to furnish and decorate the unit;
- Freedom and support to control schedules and activities;
- Access to food any time;
- Right to have visitors at any time;
- Have an accessible environment.

Modifications: What is a modification?

- A modification is a time-limited restriction to a residential-specific right.
- The general HCBS rights that apply to all settings and the PCISP planning process **can NOT modified**. They are afforded to all individuals using HCBS services.

Modification: What is a modification?

- Only residential specific rights can be modified. **An accessible environment CAN NOT be modified!**
- A modification is only used when a health or safety risk is present for an individual. A modification is not used because an individual's choices make their provider uncomfortable- it must be based on health and safety.

Modification: What is a modification?

- A modification is a process that requires documentation, data collection, data analysis, and scheduled re-review.
- The modification process DOES NOT negate the DBHDS Office of Human Rights review process for any restriction of Human Rights! Contact your local advocate if you have questions.

Modifications: When is a modification appropriate?

- A modification is appropriate when the specific residential protection leads to a health and safety concern.
- A modification is a last resort and less-intrusive alternatives have not been successful.

Modifications: When is a modification appropriate?

- The individual's support team has answered these questions together:
 1. Are any of the residential specific protections causing a health and safety concern for the individual receiving services?
 2. Have less intrusive interventions been used? This could include: specific staff supports, natural supports, specific services (AT, TC, etc.).

Modifications: When is a modification appropriate?

3. Will the proposed modification do no harm to the individual?
4. Does the individual/guardian/authorized representative consent to a modification?

Modifications: When is a modification appropriate?

- Implementing a time-limited modification is a team-based decision. A provider may not implement a modification without consulting a support coordinator.
- As the SC, you are facilitating this discussion and ensuring that a modification is only used as a last resort. **If something else can be attempted before a modification- IT'S WORTH A TRY!**

Informed Consent for HCBS Modifications

The individual must have informed consent regarding the HCBS modification.

Informed consent should occur at least yearly.

Providers will need to maintain the signed consent form in their records.

The modification should be reviewed at a minimum each year to see if the modification is still needed.

Best practice is review monthly or quarterly.

Don't assume the modification is permanent

Modifications: What is the process?

If you are contacted by someone on the support team who thinks a modification is required, here are a few steps to follow:

1. Ask for more information. Is the concern being discussed able to qualify for a modification? Meaning, is it a residential specific right (other than access)? *If the answer is NO- explore other alternatives.*
2. If the concern does warrant a modification, schedule a team meeting. A modification can be implemented at any time and does not require waiting until the annual meeting.

Modification: What is the process

3. During the meeting, be prepared to answer these questions-
 - ✓ What specific protection is causing the health and safety concern? Where is this documented?
 - ✓ What specifically is the concern? Define the risk.
 - ✓ What less-restrictive alternatives have been tried?
 - ✓ Does the individual/guardian/ AR consent to the proposed modification?

Modification: What is the process

- ✓ How will the provider collect data on the modification?
- ✓ How often will be data be reviewed?
- ✓ How often will the ability to terminate the modification be reviewed?
- ✓ How will the provider communicate this to the individual and family? EX- Person-centered reviews, monthly updates, etc.
- ✓ Will be proposed modification do no harm to the individual?

Modification: What is the process

4. The provider documents the implementation of the modification in the safety restriction section of the Part V in WaMS.
5. Support Coordinator monitors the implementation and data-review to ensure that the individual's rights are not modified for any longer than is absolutely necessary.

Modifications: As an SC, what is MY role?

- **You are the facilitator** of the modification process. You ensure that a provider follows all of the required steps.
- **You are a quality check** on the process to ensure that individuals do not arbitrarily have their rights modified.
- **You are an advocate** for the individual. If a less-restrictive alternative can be used, you ensure it is tried first.
- **You are an accountability check** to ensure that data is being collected and reviewed and that the modification is assessed for the ability to terminate.

Modification Roles:

Support Coordinator

- May identify the need for a modification,
- Ensures a modification is a valid option,
- Facilitates a team discussion
- Ensures less restrictive alternatives are tried
- Ensures process is documented appropriately

Modification Roles:

Support Coordinator cont.

- Reviews data submitted by the provider
- Ensures that the ability to terminate the modification is reviewed at intervals agreed to by the team (quarterly, 6 months, 1 year).

Modification Roles:

Provider

- May identify the need for a modification
- Documents all less restrictive alternatives
- Develops a data collection system
- Determines intervals to review data
- Completes Safety Restriction form in WaMS following meeting
- Ensures consent is signed by individual
- Submits regular data review to SC

Modification Roles:

Individual

- May identify the need for a modification
- Participates in team meeting
- Tries less restrictive alternatives
- Consents to the modification.

What is NOT a Modification?

Eric works at Target and his shift begins at 9am. In order to make it to work on time Eric must wake up at 7:30am. Eric does set an alarm on his phone, but he often sleeps through it. Eric has asked his residential staff to support him by waking him up no later than 7:40am if he sleeps through his alarm. This is **NOT** a modification to Eric's ability to direct his own schedule. This is a requested support that is outlined in his part V and implemented by his support team.

What is NOT a Modification?

Jordan is prone to losing his front door key. As a result, Jordan's sponsored provider keeps the front door key in a lock box outside of the garage. Jordan knows the code for the lock box and is able to access the key whenever needed. This is **NOT** a modification to Jordan's ability to access the key to his home. He has access to the key and feels satisfied with the current set-up.

What is NOT a Modification?

Tristan is an individual who resides in a sponsored setting. He has limited motor skills and requires full staff support with all ADL needs. His part V outlines his support needs and gives staff specific instruction for how to best provide him privacy. Tristan is left alone while using the toilet and knocks on the wall when he is ready for staff to support him. This system provides Tristan with privacy and dignity. This is **NOT** a modification to his right to privacy. It is simply the level of support needed to complete the ADL tasks.

What is NOT a Modification?

Rashaan likes to live in a minimal environment. He does not like bright colors, items on his walls or any table top decorations. Rashaan's only décor request is blacked-out curtains in his room. Rashaan's support team did notice that he seems to like the color blue and selected a blue comforter and pillow cases. Rashaan's room is minimal, but this is **NOT** a modification. This is his preference and does not require a modification.

Modification Summary

- A modification should not be used because the provider believes that the individual is incapable of exercising his/her/their HCBS rights. **HCBS rights are inherent Human Rights.**
- A modification is not to be used to restrict people from doing things the provider is uncomfortable with.
- A modification is only to be used for health and safety reasons.
- A modification must follow the process outlined in the settings regulation (modifications are justified and documented, with alternatives, consent given, and revisited regularly by the provider.)
- As providers and SCs, we are there to **support** individuals and help them to **build skills.**

Ongoing Monitoring: SC's Role

- Once the state brings all HCBS settings into compliance, we must STAY in compliance.
- Reaching compliance is not a one time accomplishment.
- If a provider backslides on compliance, the same consequences remain. This means that any provider who fails to stay in compliance may have their provider agreement suspended or terminated.
- As an SC, you are the first line of quality oversight in our system. You see the individuals you support in various settings, review documents, and monitor the status of the PCISP.

Ongoing Monitoring: SC's Role

- Your role is to ensure that individuals are receiving their HCBS rights, directing and building their best-lives, and are always treated with dignity and respect.
- Your role is also to document this monitoring and support each time you see the individual.
- Your role is to communicate any concerns with the individual, provider, family/guardian, your supervisor, human rights (as needed), licensing (as needed) and the CRC team (as needed).

Ongoing Monitoring: Visits, Calls & Emails

- The key to successful visits, calls and emails is establishing a good rapport with the individual you support.
- The first step to quality monitoring is to see the individuals you support. As an SC, you see the individual you support at least quarterly (monthly for ECM). During this visit you can take note of the individual's satisfaction with services, any desired changes, any interest in employment, and assess access to the community. Your face-to-face visits provide vital information about the status of each individual.
- You may also get calls or emails from the individuals you support and/or providers. You can also assess for any needed changes during these interactions.

Ongoing Monitoring: Documentation

- As an SC, you see documentation from each individual's provider(s). When reviewing the documentation take note of the following:
 - ✓ Is the language person-centered?
 - ✓ Are the individual's chosen outcomes being supported?
 - ✓ Do any interventions seem restrictive or coercive in nature?
 - ✓ Is the individual accessing the community?
 - ✓ Does the individual have multiple transportation options?
 - ✓ Does the individual have autonomy in their day?
 - ✓ Is the individual treated with dignity and respect?
 - ✓ Does the individual make daily choices?
 - ✓ Can the individual decline scheduled activities?
- If something in the documentation seems to not align with the individuals goals or HCBS rights, ask for clarity and advocate for the individual!

Addressing Concerns

- As an SC, you may be the first person to notice that someone's HCBS rights have been violated. It is vital that you speak up and advocate for the individual in this situation.
- This may result in a conversation with the provider, family and/or guardian. This may also result in a report to DBHDS OL or OHR, or DSS.
- Remember to document, document, document!! Any concern and resulting actions or conversations with all involved parties.

Addressing Concerns: Support

You do not have to address every concern on your own. If you need clarification or support when working with the team to address a concern you may-

- ✓ Contact your direct supervisor with the CSB
- ✓ Contact the CRC assigned to the individual Team
- ✓ Contact the local OHR Advocate for any concern that involves Human Rights
- ✓ Contact DMAS directly-

hcbscomments@dmas.Virginia.gov

Full Compliance

- Once a setting has achieved full compliance, a letter will be sent to the provider.
- **Reaching HCBS compliance is not a one-time achievement.** A provider must maintain their compliance status which will be monitored on an ongoing basis through:
 - The DBHDS Office of Licensing
 - The Office of Human Rights
 - DMAS QMR
 - Support Coordination and other quality monitoring reviews.
- **If a setting can't reach full compliance, the provider participation agreement will be reviewed.** Possible consequences include
 - suspension of billing, and
 - removal of the agreement.

HCBS Resources

Statewide Waiver Transition Plan for
review:

http://www.dmas.virginia.gov/Content_pages/HCBS.aspx

HCBS Resources



The Toolkit can be located on the DMAS Website:

<https://www.dmas.virginia.gov/providers/long-term-care/waivers/home-and-community-based-services-toolkit/>

HCBS Resource

Additional questions can be sent to your regional CRC

Region 1 - Todd Cramer

todd.cramer@dbhds.virginia.gov

Region 2 – Nedria Ames

nedria.ames@dbhds.virginia.gov

Region 3 - Todd Cramer

todd.cramer@dbhds.virginia.gov

Region 4 – Ronnitta Clements

ronnitta.clements@dbhds.virginia.gov

Region 5 – Michelle Guziewicz

michelle.guziewicz@dbhds.virginia.gov

DBHDS Office of Human Rights

You can contact the Office of Human Rights

Human Rights Contact

HCBS Resource

You may also reach out directly to DMAS
hcbscomments@dmass.virginia.gov

ANY

QUESTIONS?