The HCBS Modifications Process Explained

According to federal regulation, the following basic elements are expected of ALL DD waiver providers and settings that fall under the HCBS Settings Regulation Final Rule:

- Is integrated in and supports access to the greater community
- Provides opportunities to seek employment and work in competitive integrated settings, engage in community life, and control personal resources
- Ensures the individual receives services in the community to the same degree of access as individuals not receiving Medicaid HCBS
- Is selected by the individual from among setting options including non-disability specific settings
- Ensures an individual's rights of privacy, respect, and freedom from coercion and restraint
- Optimizes individual initiative, autonomy, and independence in making life choices
- Facilitates individual choice regarding services and supports and who provides them

Provider "owned and controlled settings" (i.e., group homes, sponsored residential homes, supported living apartments/homes) have additional criteria to follow:

- Specific unit/dwelling is owned, rented, or occupied under legally enforceable agreement
- Same responsibilities/protections from eviction as all tenants under landlord tenant law of state, county, city or other designated entity
- If tenant laws do not apply, state ensures lease, residency agreement or other written agreement is in place providing protections to address eviction processes and appeals comparable to those provided under the jurisdiction's landlord tenant law
- Each individual has privacy in their sleeping or living unit
- Units have lockable entrance doors, with appropriate staff having keys to doors as needed
- Individuals sharing units have a choice of roommates
- Individuals have the freedom to furnish and decorate their sleeping or living units within the lease or other agreement
- Individuals have freedom and support to control their schedules and activities and have access to food any time
- Individuals may have visitors at any time
- Setting is physically accessible to the individual

As a provider, you must ensure that an individual's HCBS rights are implemented in the least restrictive manner necessary to protect the person.

***BUT*, you say,**

John has Prader-Willi syndrome and cannot have access to food "at any time."

Jane has a history of wandering and cannot leave the setting on her own.

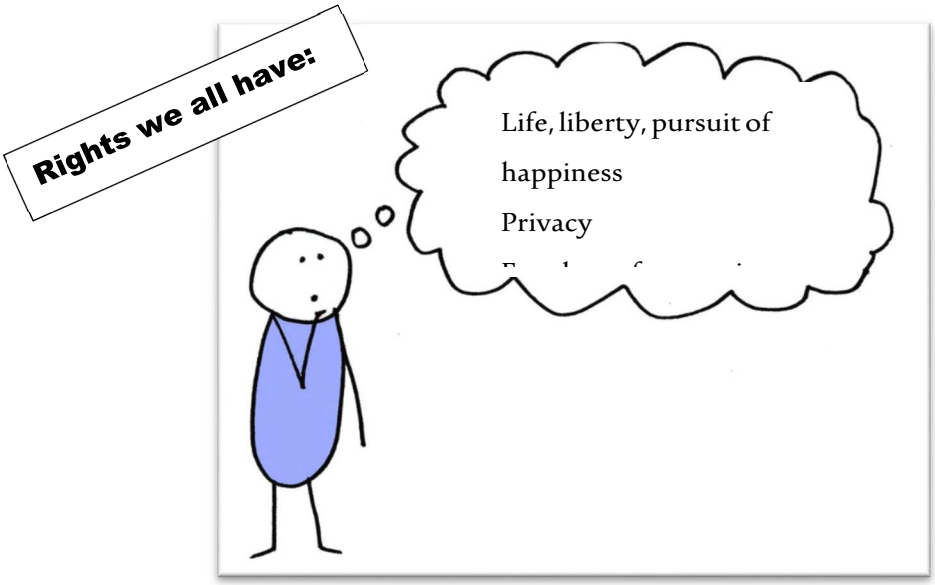
Tom's past "visitors" have been drug dealers.

This does not mean you, as the provider, are free to disregard the settings rules!

What is a "modification?"

An HCBS modification is an agreed upon restriction, implemented by the provider, in the setting to limit an individual's rights in order to address an identified need or risk to health and safety.

The HCBS settings requirements are inherent rights that all individuals have.



Further, all individuals receiving services in settings that fall under the settings requirements are presumed competent to experience all of the benefits of community living that each of us enjoy, including the capacity to express their preferences and choice in the setting, AND expect that their choices will be honored.

Only if there is a health and safety, behavioral, or other risk to that individual in relation to one or more of the HCBS rights that is justified AND documented in the individual's plan, can ANY of these rights be restricted. This restriction is called a MODIFICATION.

Modifications are ONLY for provider owned and controlled settings and ONLY for the "additional criteria" (i.e., no modifications are allowed for the basic HCBS expectations). These are typically necessary for some health or safety reason. **An individual's physical access to the setting (last of the "additional criteria") cannot be modified at any time.**

Modifications of the additional criteria must be:

- Supported by specific assessed need/risk
- Justified in the person-centered service plan
- Documented in the Safety Restriction section of the Part V

How do I do a modification?

Documentation of modifications of the additional criteria in the person-centered service plan MUST include:

1. **Specific individualized assessed need**

For example, **John's** Prader-Willi diagnosis is documented in his plan along with information about his behaviors around food ("When John has continuous access to food, he will eat it all without stopping.") and the consequences for him ("John will make himself very sick by non-stop eating, will gain weight, and that will put his health/life at risk.").

However, it's not OK for *everyone* in John's house to have their food restricted because John's disability prevents him from access. *They* don't have a specific assessed need! If the pantry and fridge must be kept locked, perhaps the housemates have a key to the open it or they keep their own snacks in mini fridges in their room with their bedroom doors locked.

For **Jane and Tom**, data should be collected and documented in their records such as the number and times Jane has wandered away from the home and been found walking in the street or another unsafe location and the number of times Tom's potentially dangerous visitors tried to sell drugs to him and his housemates.

2. Prior interventions and supports including less intrusive methods

Providers must show that they have taken less intrusive steps to support the individual in having access to the "additional criteria" *before* restricting them in any way. You should document in progress notes, data collection in support of behavior plans, etc.:

- The positive interventions that have been attempted to help reduce any challenging issues and/or help support and reinforce the learning of new, more appropriate skills.
- Any analyses completed to determine the cause of the issue/behavior and why it is being manifested, as well as alternative positive measures, activities, and/or supports.

Documentation for John may note, for example, that the provider installed an alarm on the refrigerator to alert staff when the refrigerator was being opened to limit John's access food and prevent overeating; however, the alarm constantly going off caused a disturbance and created anxiety among the individuals and staff in the home.

Documentation for Jane could note, for example, how staff attempted to teach Jane how to walk to the park and back by herself; however, she would constantly become distracted and wander away from the path and attempt to follow other people home, a potentially dangerous situation.

Documentation for Tom may note that he has a strong need for social interaction, which has resulted in friendships with people who do not represent his best interests. These friends frequently seek him out, which reinforce his need for social acceptance. Staff have repeatedly verbally counseled Tom on the dangers to himself and his housemates of having visitors who are actively trying to sell him and his housemate's illegal drugs. Tom has also viewed videos on appropriate friend relationships, including the consequences/penalties for using illegal drugs. However, this has not changed Tom's choice of guests.

3. Description of condition proportionate to assessed need

This means that the modification must be reasonable for the individual's need for limits in an area of the additional criteria. For example, preventing **Tom** from ever having any visitors at any time would NOT be proportionate to his assessed need.

4. Ongoing data measuring effectiveness of modification

Once a modification is written and included in the individual's Plan for Supports, ongoing data must be collected and reviewed periodically to demonstrate that it is having the desired, beneficial effect.

For example, **John's** modification may be the following statement in his Plan for Supports:

"Kitchen food supplies are kept under lock and key and John is only permitted food at certain approved times. In addition, staff carefully monitor John for instances of obtaining food at other times."

THEN,

Staff regularly record John's weight to ensure it is not increasing and note instances of him obtaining food at times other than when he is supposed to have it.

Jane's modification may be the following statement in her Plan for Supports:

"Jane will require staff supervision when she leaves the home. Staff will continue to provide Jane skill building in how to use a simple map or her phone to find her way to close destinations and back home with staff support."

THEN,

Staff will regularly record progress toward navigating to and staying on track to reach destinations on her own, and will modify support activities based on her progress.

Tom's modification may be the following statement in his Plan for Supports:

"Tom will not be permitted to have visits from his "friends" who have been observed attempting to deal drugs in the home, but he will be encouraged to have visitors at any time in the form of his family members. *A support activity will be added to Tom's residential Plan for Supports that he will be assisted in making new friends in the community.*"

THEN,

Staff will document the names of all of Tom's visitors and attempted visitors.

5. Established time limits for periodic review of modifications

At the time of the initiation of the modification, establish a regular schedule (no longer than annually, but perhaps more regularly) for reviewing the ongoing need for the modification. State this with the modification.

At the time of the review, use the data to determine if the modification is still required.

For example, **John** may always require certain food restrictions due to his Prader-Willi, but documentation of his gaining access to food other than at prescribed times may indicate the need for continuing the modification in his Plan for Supports.

Jane may eventually achieve the ability to safely walk to and from the park on her own without distraction, or gradually have the distance increased between her and the DSP when she is out in the community to allow her to have more independence.

Tom's drug dealer friends may stop coming around after six months of not being admitted to the home. Documentation of this fact should be included in progress notes and quarterly person-centered reviews (PCRs).

The six-month PCR may show that visits from his sister have gone well. Also during that time, Tom's Workplace Assistance staff has helped him make a friend at work who does not do/deal drugs. His modification around visitors is lifted so that this friend can visit. Group home staff are vigilant in monitoring the situation and document Tom's success with his friend's visits.

6. Individual's informed consent

Prior to implementing a modification of a person's rights, the support coordinator and provider must fully inform the person of the assessed need for the modification and how the modification will be implemented. The individual must agree to the modification, as evidenced by their signature on the plan that includes the details of the modification. Then the modification and continued reason for its inclusion in the plan (as appropriate) should be discussed with the person at least annually (more frequently as necessary).

7. Assurance that interventions and supports will not cause harm

The modification must not be something that interferes with the individual's basic human rights, particularly as outlined in DBHDS Human Rights regulations. Any modification which could endanger the individual's health or safety is strictly prohibited.

Note: The provider must work with the individual, the Support Coordinator, and the person-centered planning team to address all requirements and steps necessary to implement a modification to a person's rights.

HCBS Remediation Required Regarding Modifications

Modifications can be added to an individual's Plan for Supports at any time. It is not necessary to wait until the beginning of a new ISP year to add a new or remove an existing modification that is no longer needed. New modifications should be discussed with the Support Coordinator and must have the agreement of the individual or guardian before implementation (see #6 above).

For those providers that have had their HCBS settings review and the summary report included a lack of full compliance around modifications, proof that the required modifications is in place must be presented to the HCBS reviewers before the setting will be deemed fully compliant.

If you have questions about any of the above elements, please reach out to your DBHDS Community Resource Consultant.