

Rights Restrictions: Providers

Settings Rule compliance and human rights restrictions:

CMS has provided additional guidance on human rights restrictions. The state would like to clarify Settings Rule human rights restrictions requirements, as a whole.

If anyone not receiving Home and Community Based Services (HCBS) is able to do something, then that individual receiving services has the same right.

Anytime someone's ability to do something, or any choice is limited, then a rights restriction must be implemented to put that limitation in place while they are receiving HCBS services.

Some examples of restrictions include but are not limited to:

- Bedtime
- Who/what/where an individual eats or drinks
- Who an individual talks to
- Who and when people visit
- Limiting overnight visitors
- Supervision/free time
- Who or when an individual has a relationship with
- Locked doors
- Access to money
- Alcohol (age 21+)
- Access to medications
- Media content (age appropriate)

When can emergency temporary interventions be implemented:

When there is an immediate risk to the health and safety of the individual or others, providers have an obligation to respond in an emergency to protect the health and safety of individuals served and the community. The temporary intervention must be relinquished as soon as the risk has passed.

Examples include but are not limited to:

- Individual about to walk in front of a vehicle
- Individual about to put their hand through a glass window
- Suicide attempt
- Bodily harm to self or others
- Attempting to jump from a moving vehicle
- Arson/actively setting a fire

The eight documentation requirements of the rights restriction can be found here: [Restrictions and Modifications](#)

Documentation of a diagnosis is not sufficient justification. This section must clearly demonstrate an assessed need for the modification including critical events or situations that have transpired that support the need for the modification.

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Individualized assessed need:

A rights restriction can only be used to address a real and immediate risk to the health and safety of the individual or others. Rights restrictions are required to be based on current and relevant support needs and concerns. It cannot be based on outdated historical information. The rights restriction cannot be for the benefit or convenience of staff or the contractor.

A rights restriction may be implemented for the individual who needs it and is not imposed on a group of individuals or for an entire setting. Rights restrictions cannot be used as “house rules” in any setting.

The following are examples of “house rules” or restrictions implemented for a group of individuals. These are not permitted:

- Day program requirement that individuals turn in their cell phones for the day
- Rules that limit visiting hours for everyone
- Overnight guests are not allowed in their home
- No one is allowed to have food or drinks in their rooms/units
- Alcohol is not permitted in their home
- Everyone is required to wake at the same time, eat at the same time, exercise at the same time, etc.
- Required checks in an individual’s private living space (e.g. nighttime checks at designated times or limited alone time in an individual’s room during the day)
- Medications are locked up and staff are required to distribute them, instead of allowing the individual to manage their own medication

In group settings, other individuals must be able to circumvent the individualized restriction and indirect restrictions are not allowed. An individualized rights restriction used for an individual cannot affect another individual in the same setting, to the greatest extent possible. It may not be possible to avoid using a rights restriction, which limits the rights of another individual. When this is necessary, the provider must make reasonable efforts to decrease the impact of the restriction on other individuals. For those restrictions that affect other individuals in the setting, there must be a way for them to circumvent the restriction. For example:

- When an individual in a group setting needs the kitchen cabinets locked due to a safety risk, the provider could give keys to other individuals in the setting so they may freely access the cabinets.
- If there is an individual with a media restriction in a group setting that limits any media rated PG-13 or above, other individuals can be given the option to watch media on

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personal devices (such as phones, tablet, computer, in their private living space or with their headphones in a shared space) or having an agreed upon shared space media schedule.

- Settings with controlled-egress should be able to demonstrate how they can make individual determinations of unsafe exit-seeking risk and make individual accommodations for those who are not at risk. Technological solutions, such as unobtrusive electronic pendants that alert staff when an individual is exiting, may be used for those at risk, but may not be necessary for others who have not shown a risk of unsafe exit-seeking behavior.

Consequences given to a minor (someone under age 18) to correct behavior are to be handled as rights restrictions, if receiving services with DSPD. Consequences could include “grounding,” time out, loss of privileges, etc. It is important that family culture is considered and that parents have the primary voice. The consequences are agreed upon with the support team. **It is not appropriate for the provider to decide consequences for the minor outside of the person-centered restriction process.**

Informed consent:

The expectation is that the individual will lead the person-centered planning process as much as possible. The rights restriction process is part of this process. Legal representatives should have a participatory role, as needed, and as defined by the individual, unless the state law confers decision-making authority to the legal representative.

1. If there is no guardian or legal representative, **then only the individual** can grant, deny, or withdraw informed consent.
2. If there is a guardian or legal representative, **then the court order must be consulted.** Does the state grant the guardian or legal representative authority to make this kind of decision on their behalf?
 - a. For parents/guardians of minors, there will not be a court order relative to their rights.

What happens when informed consent in not obtained?

If informed consent is not obtained by either the individual or the legal guardian, the restriction **CANNOT** be implemented.

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Role of a Provider Human Rights Committee:

Restrictions must be approved by a Provider Human Rights Committee.

The provider or the Provider Human Rights Committee cannot override the informed consent of the individual. For example, use of DSPD Form 1-3 Voluntary Financial Agreement is not allowed as a replacement for financial restrictions that need to be approved through Provider Human Rights Committee processes. Use of this form was removed from DHHS 90743 scope of work.

The role of the committee is to ensure that the rights restrictions are required, that it is needed to ensure the safety of the individual and others, it is the least intrusive option, and that informed consent has been obtained.

Dignity of risk:

Dignity of risk means allowing individuals the right to take reasonable risk, as it is essential for their dignity and self-esteem and should be stopped by overly cautious team members.

As a part of the individual's person-centered planning team, it is the provider's responsibility to assist the individual through the decision making process.

Informed decision making is a process where you support an individual to get information about a situation or problem and make a decision.

1. Assist the individual to understand the decision/issue/situation.
2. Gather information.
3. Explore options and consider outcomes.
4. Allow the individual to decide, act, and empower.
5. Evaluate the decision.

It is okay to allow individuals to experience natural consequences based on the decision they make. It is an individual's right to make decisions that are not always the healthiest or the safest, just like anyone else has the same right.

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An individual in HCBS services, pursuant to Utah Code Annotated 75-5-301.5 and Utah Administrative Code R432-152-7 and incapacitated person for whom a guardian is appointed has a right to:

- Their current and previously stated desires, preferences for health care and medical treatment, and religious and moral beliefs.
- Remain as independent as possible, including giving deference to the person's preference for residence and standard of living.
- Be granted the greatest degree of freedom possible that is consistent with the reason for guardianship.
- Engage in any activity that the court has not expressly reserved for the guardian, including marriage or domestic partnership, traveling, working, or having a driver's license.
- Be treated with respect and dignity.
- Be treated fairly by the person's guardian.
- Maintain privacy and confidentiality in personal matters.
- Receive telephone calls and personal mail and associate with relatives and acquaintances unless the guardian and court determined that the association should be restricted or prohibited in accordance with Section 75-5-312.5.

Role of Division Human Rights Council:

The role of the DSPD Human Rights Council is to review initial Provider Human Rights Plans for all new provider agencies; hear appeals of Human Rights Committee decisions and provide direction, training, and additional assistance to remedy those situations as per Section R539-3-4(5).

DSPD's Human Rights Council also provides technical assistance for court related human rights questions, and oversees the Electronic Surveillance Certification, including review of all cameras in HCBS Settings.

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If you have questions or concerns about rights restrictions submit any questions to:
HCBSSettings@utah.gov

Additional information: <https://medicaid.utah.gov/ltc-2/hcbstransition/>



Utah Department of
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