

HCBS Settings Rule: Restrictions & Modifications

What is a rights restriction?

It is a limitation to the rights of an individual due to a specific assessed need in order to support the health, safety, and well-being of the individual or the community.

A rights restriction can only be used to address a real and immediate risk to the health and safety of the individuals or others.

When can a rights restriction be implemented?

Providers, support coordinators, and case managers must optimize an individual's ability to make choices while minimizing the risk of an individual harming themselves or others. There are times when an individual and their support team may decide it is necessary to restrict or modify an individual's rights after all of the options for less restrictive interventions have been unsuccessful.

It is a provider's responsibility to assure safety, AND individuals have the right to make decisions in their life. We all make decisions that are not always the healthiest or safest. When these conflict, the team must consider the severity and the likelihood of potential negative outcomes against the rights of the individual and limit those rights only when truly necessary, and according to the requirements of the Settings Rule.

A rights restriction cannot be used to impose the preferences, opinions, or values of the individual's support team or provider when there is no real and immediate risk.

A rights restriction may only be implemented for the individual who needs it, and is not to be implemented for a group of individuals or for an entire setting. Rights restrictions cannot be used as "house rules" in any setting or for any population. They also cannot be used for staff convenience.

One provider-owned or controlled residential setting requirement that is never subject to a rights restriction or modification is the individual's right to a physically accessible setting.

The following are examples of "house rules" or restrictions implemented by the provider across a group of individuals and **are not permitted**:

- Day program requirement that individuals turn in their cell phones for the day
- Only staff have access to food (e.g. food is locked and individuals have to ask staff to access, only staff have access to kitchen area)
- Individuals cannot come and go from the setting independently
- The setting is fenced in and locked and staff have to let individuals in and out of the setting
- Rules that limit visiting hours for everyone

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- 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.
- Individuals all have automatic supervision imposed (e.g. everyone within line of sight, no one can leave with unapproved friends or family, etc.)
- Required checks in an individual's private living space (e.g. nighttime checks at designated times, limited alone time in an individual's room during the day)
- No individuals are allowed to manage their own medications. They are all locked up and staff are required to distribute them.

If all of the individuals receiving services in the setting agree to “house rules” as roommates and it is their choice to follow those rules that is their choice. At no time can the provider or staff implement or enforce those rules. The provider or staff can assist the individuals in the process of the roommates addressing the rules. Staff support could include scheduling a meeting, preparing for the meeting, and walking through the supported decision making process.

What are the documentation requirements of a rights restriction?

The process for implementing a rights restriction is person-centered. The restriction must be justified and documented. The following are requirements that must be included in the documentation:

1. A specific and individualized assessed need.
2. The positive interventions and supports used prior to any modifications to the PCSP.
3. Less intrusive methods of meeting the need that have been tried but did not work.
4. A clear description of the condition that is directly proportionate to the specific assessed need.
5. A regular collection and review of data to measure the ongoing effectiveness of the modification.
6. Established time limits for periodic reviews to determine if the modification is still necessary or can be terminated.
7. Informed consent of the individual.
8. An assurance that interventions and supports will cause no harm to the individual.

For individuals receiving services under DSPD, restrictions must also be approved by a Provider Human Rights Committee.

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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What does informed consent of the individual mean?

The individual always leads the person-centered planning process where possible.

- If there is no guardian (or person with similar decision making authority), then only the individual can grant, deny, or withdraw consent.
 - Consider supported decision making to assist the individual
- If there is a guardian (or person with similar authority), the court order must be consulted. Does it say the guardian can make this kind of decision?
 - For parents/guardians of minors, there will not be a court order relative to their rights. Parents/guardians of minors can grant, deny, or withdraw consent.

What if an individual's right restriction affects others in a group setting?

In group settings, other individuals must be able to circumvent the individualized restriction.

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, there needs to be options for other individuals in the setting to circumvent this restriction. Examples could include:
 - Watching media on personal devices (such as phone, tablet, computer) in their private living space or with headphones if in a shared space
 - Having an agreed upon shared space media schedule (to include anytime the individual with a restriction is not in the home)
- 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.

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How do reinforcements work with consequences and reinforcements?

Personal property, personal funds, or activities an individual has a right to engage in cannot be withheld in order to use them as reinforcement for desired behavior. Money that already belongs to an individual cannot be used for reinforcement.

A participant's rights cannot be restricted due to unsuccessful completion of or refusal to participate in their program goals, except when refusal to participate in programming results in a health or safety risk to the individual or others.

Personal property, personal funds, or activities can be restricted when there is documented evidence that access to the money, items, or activities, pose a risk to the health and safety of the individual or others.

The following are examples of consequences implemented by the provider as a result of individuals not meeting their goals or unwanted behavior and **are not permitted**:

- Video Games- Limiting or taking away an individual's personal property such as their video game console and video games
- Family Time/Visitors- Limiting or taking away visits with family or friends
- Money- Limiting or taking away an individual's money
- Food- Limiting or taking away food

Consequences specific to minors receiving services with DSPD are required to be handled as rights restrictions. It is imperative that a minors' family culture is taken into consideration, that parents have the primary voice and support to the consequences that 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.

What are some examples of what restrictions or modifications should and should not look like? [Click Here](#)

Submit any questions to HCBSSettings@utah.gov

Find additional resources here:

<https://medicaid.utah.gov/ltc/hcbstransition/>