



**COLORADO**

Department of Health Care  
Policy & Financing

## OPERATIONAL MEMO

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**OPERATIONAL MEMO NUMBER: HCPF OM 19-006**

**TITLE: HCBS SETTINGS FINAL RULE—RIGHTS MODIFICATION UPDATES**

**SUPERSEDES NUMBER: PARTIALLY SUPERSEDES FAQ PART II, ISSUED UNDER COMMUNICATIONS BRIEF DATED JUNE 22, 2018**

**ISSUE DATE: FEBRUARY 26, 2019**

**EFFECTIVE DATE: FEBRUARY 26, 2019**

**DIVISION AND OFFICE: POLICY, INNOVATION, AND ENGAGEMENT DIVISION, OFFICE OF COMMUNITY LIVING**

**PROGRAM AREA: HCBS WAIVERS**

**APPROVED BY: BONNIE SILVA**

**KEY WORDS: HOME AND COMMUNITY-BASED SERVICES SETTINGS FINAL RULE, HCBS, RIGHTS MODIFICATION, INFORMED CONSENT, TRAINING**

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*HCPF Memo Series can be accessed online: <https://www.colorado.gov/hcpf/memo-series>*

### **Purpose and Audience:**

The purpose of this Operational Memo is to inform case management agencies and providers serving the home and community-based services (HCBS) waivers of guidance recently provided regarding the rights modification process under the HCBS Settings Final Rule.

### **Background:**

In 2014, the federal Centers for Medicare & Medicaid Services (CMS) published a [rule](#) requiring HCBS to be provided in settings that meet certain criteria. The Department's [website](#) contains information about implementation of these criteria, including the [Statewide Transition Plan \(STP\)](#), [milestones](#) with current target dates for completing the steps in the STP, training materials, and additional guidance.

The Department has issued three sets of responses to Frequently Asked Questions (FAQs) regarding implementation of the HCBS Settings Final Rule: [Part I](#), [Part II](#), and [Part III](#). As stated in the cover Communication Brief/Policy Memo for each FAQ issuance, providers and case management agencies serving HCBS participants were required to read and comply with each issuance.

On January 15, 17, and 22, 2019, the Department provided trainings to clarify the process for implementing rights modifications under the HCBS Settings Final Rule. The trainings were similar to each other and covered:

- Individual rights under the HCBS Settings Final Rule;
- The rights modification process, including the federal criteria that must be documented, obtaining the individual's informed consent, and who does what;
- Common "what if" scenarios; and
- Updated deadlines for providers and case management agencies.

During each training, the Department and staff with the Colorado Department of Public Health & Environment (CDPHE) also responded to questions from participants.

### **Information/Procedure:**

To ensure timely compliance with the HCBS Settings Final Rule, Community Centered Boards (CCBs), Single Entry Point (SEP) entities, county case workers serving the Children's Habilitation Residential Program (CHRP), and providers affected by the HCBS Settings Final Rule were required to participate in one of the January trainings. If any affected staff in your agency were unable to participate or would like a refresher, they should access the following materials online:

- [Training slide deck](#);
- [Training recording](#) (generated from the January 17, 2019 training); and
- [Training transcript](#) (generated from the same training)

As stated in each training, by **July 31, 2019**, each provider must have a copy of the appropriate documentation for each rights modification or stop implementing the rights modification. The provider must be able to show this documentation to the Department, CDPHE, and (in some cases) CMS. This deadline represents an extension of the May 31, 2019 deadline published in FAQ Part II, Item #59.

In addition, as stated in the January 17 and 22, 2019 trainings, a court may impose restrictions on an individual without their consent, and these restrictions should be documented in the person-centered plan. **If a provider is taking action(s)** to implement or help an individual comply with a court order, these actions constitute a rights modification requiring that the eight federal criteria, including informed consent, be documented. This guidance modifies that given during the January 15 training and published in FAQ Part II, Items ##52 and 55 (to the effect that if a court has imposed restrictions on the individual, the provider must follow them, without necessarily ensuring that the eight federal criteria, including informed consent, have been

addressed). The updated guidance is more consistent with current practice. The rest of the FAQs remain in effect.

**Attachment(s):**

None

**Department Contact:**

Inquiries may be sent to the following shared inbox: [hcpf\\_ptp@state.co.us](mailto:hcpf_ptp@state.co.us).