

## RESTRICTING HCBS SETTING QUALITIES FREQUENTLY ASKED QUESTIONS

Question	Answer
<b>What are Home and Community Based Service (HCBS) Setting Qualities?</b>	Home and community based qualities are required characteristics that all HCBS settings must have. HCBS settings are those places where participants who access HCB services live or receive their services. HCBS qualities support integration, independence, choice, autonomy and participant rights. For a detailed list of the setting qualities, please review <a href="#">IDAPA 16.03.10.313</a> .
<b>What is risk mitigation?</b>	<p>If one of the required HCBS setting qualities present a health or safety risk to the participant or those around the participant, the person centered planning team must identify goals and strategies on how to reduce the risk.</p> <p>These risk mitigation strategies should be actively promoted whenever there is an imminent or likely health or safety risk. These strategies must be included on the participant’s plan and must be in place until it is safe for the participant to enjoy the full benefits of the required HCBS setting qualities. Risk mitigation strategies may be in place only temporarily or long-term, depending on the unique needs of each participant.</p>
<b>Which providers do the HCBS setting qualities and associated risk mitigation apply to?</b>	<p>All provider-owned HCBS settings must meet the HCBS setting quality requirements. Additionally, providers who deliver services in the community or in the participant’s home must ensure they do not restrict a setting quality without a risk mitigation strategy in place. Therefore, the HCBS setting qualities and associated risk mitigation strategies apply to all providers of:</p> <ul style="list-style-type: none"> <li>• Children’s Developmental Disability Services</li> <li>• Adult Developmental Disability Services</li> <li>• Consumer-Directed Services</li> <li>• Aged and Disabled Waiver Services</li> <li>• Personal Care Services</li> </ul>
<b>How does the Department view risk in relation to the HCBS setting qualities?</b>	<p>Exposure to risk is a part of life. It is only through making choices and developing good judgment that we all learn and mature. Everyone has the right to make choices, and with choice comes a degree of risk.</p> <p>While all individuals have the right to make choices and experience the consequences of their actions, there are instances in which risks may be non-negotiable. The Department and HCBS service providers have a duty to ensure that known risks related to imminent health or safety</p>

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	<p>issues are addressed. It is the responsibility of the participant, service providers, and the person-centered planning team to ensure that factors associated with health or safety risks are discussed, safeguards are developed, and strategies are implemented to keep health or safety risks as low as possible.</p>
<p><b>What is a health and safety risk?</b></p>	<p>Health and safety risks include those actions that create or are likely to cause:</p> <ul style="list-style-type: none"> <li>• The deterioration of a participant’s physical condition</li> <li>• The deterioration of a participant’s cognitive functioning</li> <li>• An increase in a participant’s maladaptive behaviors</li> <li>• Criminal activity</li> <li>• Participant injury or harm to self and others</li> </ul>
<p><b>How is risk mitigation documented?</b></p>	<p>The person-centered plan must document the goals and strategies used to mitigate risk related to the HCBS setting qualities. Authorization and documentation requirements are program specific.</p> <p><i>Links to program-specific processes will be included when they are available.</i></p>
<p><b>How is risk mitigation related to person-centered planning?</b></p>	<p>Person-centered planning is a key part to implementing effective risk mitigation strategies. All efforts must be made throughout the person-centered planning process to identify potential risks and to work with participants and/or their decision making authority to develop meaningful, valid, and appropriate safeguards.</p> <p>Person-centered plans must be finalized and agreed to by the participant and/or the participant’s decision making authority indicating informed consent. Informed consent refers to a person’s knowledge of the consequence and responsibility of the decisions he/she is about to make. Therefore, people making choices need to understand fully their responsibilities, and the possible consequences of their decisions.</p> <p>The Department’s expectation is that risks and mitigation strategies are discussed fully and agreed to during the person-centered planning process.</p>
<p><b>As a provider, I understand that my setting must comply with all HCBS setting qualities, but what is my liability if I have to</b></p>	<p>The Department understands that Idaho’s HCBS programs serve diverse populations with a variety of health and safety needs. Risk mitigation strategies allow for agreed upon safeguards to help manage risk for those participants who have not learned how to, or are not able to, keep themselves safe when exercising full autonomy.</p>

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<p><b>facilitate choice and autonomy for an individual participant whose choices may put them or others in danger?</b></p>	<p>Providers can limit their liability by implementing agreed upon strategies for any known health or safety risk and notifying the person-centered planning team when a new health or safety risk is identified. Additionally, providers should have policies and procedures in place that promote practices that will keep health or safety risks as low as possible as well as protocol to follow if a critical incident occurs that results in the need for a risk mitigation strategy.</p>
<p><b>I am the guardian/legal decision making authority for a participant receiving HCBS services. Is a risk mitigation strategy necessary if a choice I make conflicts with a setting quality?</b></p>	<p>While the HCBS rules do not supersede the capacity of a guardian or decision making authority to make decisions for the participant, a guardian or decision making authority cannot choose for a participant to receive HCBS funded services in a setting that does not meet HCBS requirements.</p> <p>A guardian or decision making authority may have preferences that conflict with a setting quality. However, unless the participant has an identified risk that jeopardizes their health or safety, the provider must adhere to the state’s requirements in order to continue receiving HCBS funding for the service(s) provided to that participant.</p> <p>If a guardian or decision making authority wishes to make decisions for the participant that cannot be supported in a home and community based setting, the participant’s plan developer can discuss alternative non-home and community based services or funding options that may be available to the participant.</p>
<p><b>I am a residential provider (certified family home or residential assisted living provider). Do I need to implement risk mitigation strategies?</b></p>	<p>Yes, if a participant you provide services to has an identified health or safety risk related to an HCBS setting quality you must implement risk mitigation strategies. In order to this, the participant’s person-centered planning team should identify a goal and risk mitigation strategy for you to implement.</p> <p>In addition to HCBS setting qualities, residential providers have residential setting qualities that they must adhere to. These additional requirements can be found at IDAPA 16.03.10.315. If a participant has a health or safety risk related to a residential setting quality, the person-centered planning team may request an exception.</p> <p>Risk mitigation strategies and exceptions allow for safeguards to be put in place for different sets of HCBS requirements. It is important to note that a person receiving residential services may have <b>both</b> risk mitigation strategies <b>and</b> exceptions in place, depending on their specific needs.</p> <p><i>Links to program-specific processes will be included when they are available.</i></p>

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<p><b>Can you clarify the “risk mitigation” and “exceptions” processes that could occur when a setting quality presents a health or safety risk to the participant?</b></p>	<p>Yes, there are two separate processes. The first process is called <b>risk mitigation</b> which is used to support participants’ opportunities for integration, independence, choice, and rights. The second process is for <b>exceptions</b> to setting qualities in provider owned and controlled residential settings (residential assisted living facilities and certified family homes).</p>
<p><b>Which requirements require a risk mitigation strategy and which require an exception when the HCBS setting quality presents a health or safety risk to the participant?</b></p>	<p><b>Setting qualities that require <u>risk mitigation</u> if they present a health or safety concern : (applies to all HCBS providers)</b></p> <p>Home and community based settings must have all of the following qualities:</p> <ul style="list-style-type: none"> <li>• The setting is integrated in, and supports full access of, individuals receiving Medicaid HCBS to the greater community, including opportunities to: <ul style="list-style-type: none"> <li>○ seek employment and work in competitive, integrated settings</li> <li>○ engage in community life</li> <li>○ control personal resources</li> <li>○ receive services in the community to the same degree of access as individuals not receiving Medicaid HCBS.</li> </ul> </li> <li>• The setting is selected by the individual from among setting options, including non-disability specific settings and an option for a private unit in a residential setting. <ul style="list-style-type: none"> <li>○ The setting options are identified and documented in the person-centered service plan and are based on the individual’s needs, preferences, and resources available for room and board (for residential settings).</li> </ul> </li> <li>• Ensures an individual’s rights of privacy, dignity and respect, and freedom from coercion and restraint.</li> <li>• Optimizes, but does not regiment, individual initiative, autonomy, and independence in making life choices, including but not limited to daily activities, physical environment, and with whom to interact.</li> <li>• Facilitates individual choice regarding services, supports, and who provides them.</li> </ul> <p><b>Setting qualities that require <u>an exception</u> if they present a health or safety concern: (applies to RALFS and CFHs only)</b></p>

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	<p>In a provider-owned or controlled residential setting, the following additional conditions must be met in addition to the above qualities:</p> <ul style="list-style-type: none"> <li>• The unit or dwelling is a specific physical place that can be owned, rented, or occupied under a legally enforceable agreement by the individual receiving services, and the individual has, at a minimum, the same responsibilities and protections from eviction that tenants have under the landlord tenant law of the state, county, city, or other designated entity. <ul style="list-style-type: none"> <li>○ For settings in which landlord tenant laws do not apply, the state must ensure that a lease, residency agreement, or other form of written agreement will be in place for each participant and that the document provides protections that address eviction processes and appeals comparable to those provided under the jurisdiction’s landlord tenant law.</li> </ul> </li> <li>• Each individual has privacy in their sleeping or living unit: <ul style="list-style-type: none"> <li>○ Units have entrance doors lockable by the individual, with only appropriate staff having keys to doors as needed.</li> <li>○ Individuals sharing units have a choice of roommates in that setting.</li> <li>○ Individuals have the freedom to furnish and decorate their sleeping or living units within the lease or other agreement.</li> </ul> </li> <li>• Individuals have the freedom and support to control their own schedules and activities, and have access to food at any time.</li> <li>• Individuals are able to have visitors of their choosing at any time.</li> <li>• The setting is physically accessible to the individual.</li> </ul>
<p><b>How is an exception documented?</b></p>	<p>The Centers for Medicare and Medicaid Services (CMS) has stated very directly that any exception to the provider owned or controlled residential setting requirements must be supported by a specific assessed need and justified in the person-centered service plan. An exception is a request for a modification or adjustment to a setting quality that is necessary to meet an individual’s assessed need(s).</p> <p>The following requirements must be documented in the person-centered service plan:</p> <ol style="list-style-type: none"> <li>1. Identify a specific and individualized assessed need that necessitates the exception.</li> <li>2. Document the positive interventions and supports used with the participant prior to any exceptions.</li> <li>3. Document less intrusive methods that were previously implemented to address a</li> </ol>

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	<p>participant's need(s) but did not work.</p> <ol style="list-style-type: none"> <li>4. Include a clear description of the intervention for the exception that is directly proportionate to the specific assessed need.</li> <li>5. Include regular collection and review of data to measure the ongoing effectiveness of the exception.</li> <li>6. Include established time limits for periodic reviews to determine if the exception is still necessary, if a transition plan can be developed, or if the exception can be terminated.</li> <li>7. Include the informed consent of the individual.</li> <li>8. Include an assurance that interventions and supports will cause no harm to the participant.</li> </ol> <p>Authorization requirements will be program specific.</p> <p><i>Links to program-specific processes will be included when they are available.</i></p>