

Welcome to the HCBS Rules Guidance Section of the Provider Toolkit!

This document contains guidance, best practices, and examples to help you understand each of the new Home and Community Based Services (HCBS) regulations. If you have to make changes to your setting to become HCBS compliant, this document can also help you generate ideas on how you might meet the HCBS requirements. Compliance with the regulations will probably look different from setting to setting, but the intention remains the same: to provide choices and protections to participants and ensure that they receive services in the most integrated setting appropriate. For more information, visit the HCBS website at www.hcbs.dhw.idaho.gov

How to Use This Document:

You will see each regulation identified first. This is what providers are required to do. That is followed by the state's interpretation of what that regulation is trying to achieve, labeled "Intent". Examples are then provided to illustrate how the requirement may look in a particular setting or service type. Finally, the state has included some best practice suggestions for each regulation. Many of these were suggested by providers as ways to meet the requirements. They are included as guidance – providers may identify other ways of meeting the requirements that are not included in this document.

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An Important Note: The Participant's Right to Make Choices Versus the Provider's Need to Restrict

A provider may believe that they know what is best for the participant or that the participant will make a “bad” choice if given the freedom to choose. Remember that all community members have the right to make choices; even when those choices result in poor outcomes. People learn by making mistakes. Medicaid participants have the same right – providers must maximize participants’ ability to make choices while ensuring that those choices do not endanger the participant or others.

However, when a setting requirement or the ability to make certain choices puts an individual or others at risk for harm because of their specific health and safety needs, then the provider **MUST** restrict that choice. For example, if a person is a diabetic and is unable to make informed choices about their food, the provider should limit their intake of sugar. That must be restricted. Or, if a participant needs one-on-one care due to a history of aggressive behavior but insists he or she be allowed to go out alone, a provider cannot accept that request. It is a health and a safety issue. A provider cannot grant requests that put a participant or others at risk for harm.

In those individual cases, **risk mitigation strategies** or **exceptions** need to be implemented through the person-centered planning process to address those health and safety issues. Please refer to the Restricting HCBS Setting Qualities frequently asked questions (FAQs) on the HCBS website at www.hcbs.dhw.idaho.gov for additional information on those processes. Remember, *all* individuals in your care should not be restricted just because *one* individual in your setting needs to have a restriction put in place. Restrictions should apply only to the individual with the need for the restriction.

Regulations that Apply to All HCBS Providers

Regulation

The setting is integrated in and supports full access of individuals receiving Medicaid HCBS to the greater community, including opportunities to seek employment and work in competitive integrated settings, engage in community life, control personal resources, and receive services in the community, to the same degree of access as individuals not receiving Medicaid HCBS.

Intent

Individuals receiving Medicaid HCBS have equal access to the same community resources and activities available to the general public. Providers should not have rules that restrict or obstruct community access. It is critical to ensure that service and support delivery practices do not isolate people with disabilities or specific needs from people who do not have them. Providers must also ensure that service and support practices do not create an environment that is institutional in nature. Individuals must be supported in their desires to participate in community activities to the extent that those activities relate to the service being furnished.

Examples

- An agency plans a trip the county fair. The provider arranges for staff and family members or natural supports to come along as well. The provider transports the individuals to the county fair and tells everyone when and where they will be picked up. Staff and/or natural supports are assigned as needed to individuals or small groups of individuals in order to allow them to pursue their own interests/activities while at the fair.
- A small group walks to a nearby community center to join in an open volleyball session where they will have an opportunity to play and interact with other community members.
- A child is working on an objective to increase his/her social interactions with peers, so the therapist and child go to the park where the child is encouraged to join others in interactive play.

Best Practice Suggestions

- There are written policies and procedures regarding residents' access to and utilization of transportation to access the community.
- There is a clear expectation that direct care staff adhere to the services and activities identified in the person's plan and honor their rights under HCBS regulations.
- A variety of age appropriate activities are organized by the provider for individuals each week both inside and outside of the setting. Age appropriate activities are defined here to mean "those activities that correspond with an individual's chronological age."
- If applicable to the service being delivered, individuals have opportunities for recreation or physical activity, creative activities (*e.g.*, opportunities to cook, craft, paint, and play musical instruments) as well as learning and education (*e.g.*, learning to use a computer, sew or knit).
- Progress notes, activity logs, calendars, or implementation plans document community engagement activities.
- Access to information about community events is available in a variety of ways such as the internet or a newspaper. Documentation may include such things as:
 - a community calendar of events.
 - a log of community activities for each month.
 - newsletters for residents/individuals with community event information included.
- Transportation logs are kept when accessing the community.
- Planning meetings are held with individuals to discuss strategies for the coming weeks to ensure community integration (*i.e.*, plan trips into the community).
- Keep a community events bulletin board with upcoming community activities posted in an easy to access area.
- Staff encourage individuals to try new things and share with them information about opportunities that the individual may be interested in.
- A "These are your rights" document is posted in a public area for individuals to see.
- The setting posts information about filing a complaint (to include an anonymous complaint) in an obvious location and in a manner or format individuals are able to understand.
- Additional suggestions in residential settings include:
 - A process is in place to support resident access to transportation.
 - Individuals are made aware of their options for transportation to and from the home.
 - Residents have access to information about current and upcoming age appropriate opportunities to participate in community events/activities outside of the home. Age

appropriate is defined here to mean that “it corresponds with an individual’s chronological age.”

- The setting provider posts information about how to access transportation. This includes current information about transportation options including bus schedules, phone numbers for taxi services, how to request staff help with transportation, if volunteer help is available for transportation, etc.
- Residents are trained at least quarterly on use of public transportation if available.
- There is a resident newsletter which includes information about transportation options and it is distributed to all residents.
- Residents have opportunities to attend church activities.
- The provider schedules regular activities for residents outside of the home which can be verified via records such as activity calendars, sign-up sheets, transportation logs, etc. (*e.g.*, shopping three times a week).
- The occupancy agreement notes a person’s right to hold a job, engage in community life, control personal resources, and receive services in the community. A copy of that agreement could be used as evidence.

Additional Guidance

What is an integrated setting?

Integrated settings provide people the opportunity to live, work, and receive services in the greater community. They offer access to community activities when and with whom the person chooses. It offers people choices in daily life activities and encourages interaction with people without disabilities or who are not receiving Medicaid HCBS.

What is a segregated setting?

A segregated setting has institutional qualities. It is a setting where nearly all of the services a person needs are provided inside that setting. It serves primarily or exclusively people with disabilities or people who have similar assessed needs. There is little support for engaging in community activities.

Why is integration important?

In general, the more experience a person has with life in the community, the more likely he/she is to enhance their skills and be willing to try different activities. Staff should encourage and support the person to take part in the community in a way that is meaningful to the person. This will foster independence and provide a better quality of life.

What does “to the same degree as” mean?

“To the Same Degree as” is defined to mean: individuals accessing Medicaid-funded HCBS have the same opportunities for inclusion, access, choices, and integration as all members of their community. In practice, when considering whether people share in the hallmarks of community living to the same degree of access as individuals who do not require services and supports to remain in the community, it is helpful to consider and compare/contrast how you live your own life. How do you make the day-to-day choices and compromises in your home, workplace, and community? What negotiations are necessary to develop and pursue your own interests and important relationships? The rights and responsibilities that we all experience every day (*e.g.*, having consideration for people we live with, having a job/going to work/fulfilling work commitment/volunteer commitment, respecting coworkers, making choices within our income/budget) are also useful to consider as we support people to navigate community life and consider the benefits and consequences of their actions. The expectations for the people you serve should be the same as for any other person living in the community. All people have the responsibility to consider the thoughts and needs of others while exercising their own rights, priorities, and preferences. We also must consider the limitations people have that may restrict the choices available to them, such as fiscal restrictions, physical restrictions, etc.

How can a rural setting meet this requirement?

Integration into the community will look very different in Lowman than it will in Boise or in Coeur d’Alene. A very rural setting may have fewer opportunities for individuals to participate in community events or gatherings, but this is also true for the public at large. The key is to be sure individuals have the SAME access to the community as others who live or receive services in that rural setting or community.

Isn’t integration different for everyone?

Yes, each individual may have different needs and different desires. Providers are trained to address those individual needs and desires and to find a way to help every individual meet those to the extent that is possible. Also, keep in mind that one individual’s needs should not limit another person’s freedoms. For example, Joe can’t move through an automated door so the provider never plans outings to a place where there are only automated doors. That limits everyone’s options for community engagement.

A note to providers

To fully support community integration, service settings must facilitate individuals regularly taking part in age appropriate activities with other individuals (aside from paid staff) who are not accessing HCBS services. In residential settings if access to the community is limited due to geography or location, the provider should facilitate an individual’s access to transportation however possible. Maybe the person can contact a natural support for transportation. Maybe the provider can post information about bus schedules or phone numbers for taxi services or help the

individual use the ACCESS van. Ideally, there will also be some community activities where an individual may choose to spend their own money as well as activities that are sponsored or at no cost. Community activity information should be shared to encourage awareness and access to the broadest array of activities that may occur inside and outside of the setting.

The following should not occur:

- Physical barriers or obstructions that serve to isolate the person from full access to the community.
- A lack of facility staffing to support opportunities for community access and the agency or not working to find/use creative and effective solutions to these barriers. (*e.g.*, identifying people in the community or natural supports who might be willing to assist).
- For residential settings, the admission agreement imposes limitations on integration and community access such as a prohibition on being employed, or a requirement that residents must receive other services on-site as a condition of residing there.

Regulation

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. The setting options are identified and documented in the person-centered service plan and are based on the individual's needs, preferences, and, for residential settings, resources available for room and board.

Intent

This requirement applies to service plan development and to those entities that are responsible for person-centered planning. Providers are expected to deliver services in accordance with the plan of service.

The intent of this regulation is to ensure that individuals are aware of and have an opportunity to select where they would like to receive their HCBS services from the variety of setting options available, and that their choices are documented as part of their service plan.

Best Practice Suggestions

- Individuals are provided with information about identifying, choosing, and changing settings in a manner or format that they can understand.
- Individuals are encouraged to ask questions about their setting options.
- If individuals want to change their setting choice(s), they are supported in that process.

Additional Guidance

What is a non-disability specific setting?

A non-disability specific setting is a setting that is not exclusive to individuals with one type of disability. For example, a memory-care unit is disability-specific because it is designed to support individuals with cognitive impairments (such as Alzheimer's disease). This regulation does not mean that memory care or other disability-specific settings cannot continue to operate under HCBS. It means that an individual with Alzheimer's disease cannot be *required* to select a disability-specific setting due to their diagnosis.

What does it mean for someone to have an option for a private unit?

It means that residential setting options provided to participants should include settings that offer private units. It doesn't mean that all residential providers are required to offer private units. In some cases, an individual may not be able to afford a private unit. They must consider their income and resources in deciding where to live just as any community member would.

Individuals and their guardians (if applicable) should be supported in identifying residential settings that meet their needs.

The following should not occur:

Individuals should not be required to select a particular disability-specific setting solely based on their diagnosis. Service settings that best meet the needs and choices of the participant should be addressed during their person centered planning meeting.

Regulation

Ensure an individual's rights of privacy, dignity and respect, and freedom from coercion and restraint.

Intent

The privacy of an individual should be respected in all aspects of life. Preservation of the person's right to privacy is a basic human dignity. The residence or center staff must ensure that the person's need for privacy is respected and protected. This includes being able to have private conversations, having a say in who has access to their personal possessions and living space, and having privacy in bathing, grooming, and dressing.

Providers have a responsibility to ensure individuals know their rights under HCBS regulations and that those rights are respected by the provider and others in that setting. Most people like to be alone at times. Everyone likes some privacy when doing things like visiting with others or talking on the phone. No one likes to be treated disrespectfully or to be manipulated into doing something they do not want to do.

Examples

- The staff converse respectfully with individuals while providing care and assistance, regardless of the individual's ability to vocalize a response. The staff does not talk ABOUT a person in front of them as if they were not there and all conversations that include personal information about an individual are held in private on a need to know basis.
- Information about filing a complaint is posted in an obvious location and in an understandable format.

Best Practice Suggestions

- In a residential setting, staff or other residents knock and receive permission before entering an individual's room.
- Post a "These are your rights" document in a public area where individuals or guardians are likely to see it.
- Written, verbal, and non-verbal communication used at the setting demonstrates the values of respect and dignity.
- Include the individual's rights as part of the residency agreement or service agreement, if applicable.
- Make a point to intermittently inform individuals receiving services from you or your agency of their rights.

- Individual privacy is provided by a setting floor plan that provides for appropriate toileting facilities with inside locks and separate space that can be accessed for personal assistance, private conversation, or quiet time. For example, is there privacy when changing clothes, while using the restroom, or bathing, is there someplace to be alone if upset, is there a place for private conversations?
- Provide or post information for individuals or their decision making authority about whom to contact to file a complaint anonymously.
- Keep records to document that information on individual's rights have been provided to all participants.
- Be sure you and/or the agency staff are trained on confidentiality policies and practices.
- Personal information about the individual is not posted or available in general or open areas.
- Personal information is kept private and not shared with others without the individual's expressed consent.

Additional Guidance

Can you explain what you mean by coercion?

To coerce someone is to use intimidation or authority to compel or force the individual to do something or not do something without regard for individual desire. Sometimes threats, intimidation or manipulation are used to coerce someone. Here are some examples of coercion:

- “You can go to the store but there is a good chance no one will be here to let you back into the house when you return.”
- “You can sit there but if you do you will not be allowed to join us outside later.”
- “I know you want to do that but I am telling you it is a bad choice and I am smarter than you are, you know that.”
- If an individual is financially dependent upon you through things like loans or your signature on the lease, that individual may not feel free to make all the same choices they would if that were not the case. This might include requesting a new service provider or a new room-mate in a residential setting.

What are restraints?

Restraints include chemical, mechanical, or physical mechanisms or use of seclusion to modify or prevent a person's behavior.

The following should not occur:

- If this is a residential setting the provider should never enter a person's bedroom without knocking first and receiving permission (unless there is an emergency or if there is a health or safety concern).
- In a residential setting the provider should not show anyone a resident's room without that resident's permission.
- In any setting, individuals' full names or personal or health information should not be left in public for others to see.
- Staff should not talk about an individual in front of that individual as if they were not there.
- Restraints should not be used unless those restraints have been authorized and the provider is able to use the restraints according to IDAPA rule and as agreed upon with the individual and/or legal guardian. Less restrictive interventions should be tried before restraints are implemented.
- A provider should not give individuals over the counter drugs to make them sleepy for the convenience of the provider.

Regulation

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.

Intent

Individuals retain the ability to make choices about how they spend their time in any given setting and are given opportunities to participate in age-appropriate activities.

Example

An individual receiving services in a DDA is offered two or three different activities to choose from to work on a goal/objective, or the opportunity to move on to a different goal/objective from their plan if they choose.

Best Practice Suggestions

- Individuals are supported to participate in age appropriate activities of their choice that are consistent with the goals and objectives identified on their plan of service. This includes activities within the setting, as well as activities in the community that the provider organizes.
- Learning a skill in the natural environment is often more effective than “classroom” training. Providers are encouraged to utilize the natural environment as frequently as possible to assist individuals in learning new skills. For example, if a goal is to learn how to use money to shop, bringing the individual to a store to shop is an important part of that training versus always using pretend money or a toy cash register in the center setting.
- The setting offers opportunities for individuals to adjust their activity schedule to best meet their preferences in the context of the services that are being delivered in that setting.
- Individuals are encouraged to share their likes, dislikes, and personal interests and have opportunities to participate in activities that match their preferences.
- The physical setting can support a variety of individual goals and needs, such as having space for individuals to move about and accommodating individual and group activities.
- Participants have opportunities to choose with whom they would like to do activities.
- In a small residential setting, individuals are asked to help develop a grocery list for the week or plan the week’s activity options.

- In a large residential setting, individuals can provide suggestions about activities or meals through a comment box, small group sessions, or by meeting with the activities coordinator.

Additional Guidance

What makes an activity “age-appropriate?”

“Age appropriate” means something that corresponds with a person’s chronological age. For example, people of all ages may enjoy working on puzzles – if this is an activity offered in an HCBS setting, then the image on the puzzle should be reflective of the interests of that age group. Children may prefer images of cartoon characters while adults may prefer landscapes. Similarly, if a community outing to go to a movie theater is organized, the provider should consider the interests of the individual(s) in selecting the movie. A young adult may prefer to see the newest superhero action movie rather than a children’s animated film. Art and craft activities can also be age-appropriate; for example, using materials such as pipe cleaners, popsicle sticks, and pom-poms are likely not appropriate for adults. Generally, the content and context of an activity are what make it age-appropriate or not.

The following should not occur:

- An individual who does not wish to participate in an activity is coerced or forced to participate.
- An individual is punished for not participating in an activity.

Regulation

Facilitates individual choice regarding services and supports, and who provides them.

Intent

Individuals are free to choose who provides the services they receive and where they receive those services. Individuals are not coerced or forced to obtain services in a particular setting instead of going out into the community for the same services.

If an individual's assessed needs allow for him/her to receive services one-on-one with a provider, that choice should always be available and not modified to suit the provider's need.

It's important that individuals and/or their guardians know that the person-centered plan is there to address the needs of individuals. If individuals are not happy with their current services for any reason, the provider should direct them to the right person who can help them make changes to the plan.

Examples

- An example of a setting that facilitates individual choice regarding services and supports, and who provides them might be a Residential Assisted living Facility (RALF) that has a physical therapist who comes to the setting to provide physical therapy. Residents may access that therapist for physical therapy if desired, or they may choose to see a different therapist in the community with whom they are familiar.
- An individual receiving services at a Developmental Disability Agency (DDA) prefers to work with male staff. The DDA has in place a process to respect that preference as staffing allows.
- The certified family home (CFH) provider supports a resident's need for transportation to receive services by offering transportation directly or by working with the resident to identify resources to assist with transportation.

Best Practice Suggestions

- There are opportunities for individuals to choose whether they want to participate in an activity or not and alternatives are offered when appropriate.
- Individual choice is reinforced with individuals whenever possible, but especially in relationship to services and supports, and who provides them.
- Staff takes the time to fully understand what services or supports the individual would like to receive off site and provide the support needed to ensure that can happen where feasible.

- Staff receives training on how to help individuals resolve problems and how to do so in a manner that maintains privacy and respect for all involved.
- The setting posts information about filing a complaint (to include an anonymous complaint) in an obvious location and in a manner or format individuals are able to understand.

Additional Guidance

If an individual is unhappy with my service, what should I do?

First, the provider should try to understand why the individual is unhappy. If it's something that can be corrected or easily addressed, that's always a good first step. If not, the provider should acknowledge that sometimes a service or service provider is not the best fit and encourage the individual to contact their service plan developer/monitor to discuss possible changes.

What role does the person-centered service plan have in meeting this requirement?

The service plan is the central place where the individual's choices for services, supports, and who provides them should be determined and honored. If an individual is unhappy with their services and supports, the provider should encourage the individual to contact their service plan developer/monitor to discuss possible changes

The following should not occur:

There are policy and/or procedures in place that say that a particular service **MUST** be obtained in-house and the individual is not able to utilize external providers for those services. In a setting that offers support services such as haircuts on site, or doctors who visit the setting, providers should never pressure participants to access those services at the setting rather than working to support an individual's right to access those same services in the community.

Regulations that Apply to Residential Providers Only: Certified Family Homes and Residential Assisted Living Facilities

Regulation

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.

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 individual and that the document provides protections and addresses eviction processes and appeals comparable to those provided under the jurisdiction's landlord tenant law.

Intent

This regulation is intended to ensure that individuals who live in a provider-owned residential setting have the same rights and protections as other community members who currently rent their home or apartment. This means that they have a written agreement in place. The written agreement needs to document residents' rights and protections and describe the conditions under which the resident could be evicted from the residence.

Best Practices

- The admission agreement covers the same resident rights and responsibilities that a lease includes, such as the:
 - amount and due date for rent or room/board.
 - resident's responsibilities (such as maintaining their living space, not engaging in activities that disrupt other residents after 9PM, etc.).
 - timeframes for giving the resident notice in the case of eviction or ending the admission agreement.
 - conditions under which a person would be involuntarily discharged.
- Meet with the individual before move-in to review the terms of the lease.
- Explain the terms of the lease in a format that the person can easily understand.
- Make sure the resident is given a copy of their admission agreement.

Additional Guidance

What are adequate noticing timeframes?

Under Idaho Landlord Tenant Guidelines, a three-day written notice is permitted if a resident has not paid rent or room and board, has violated the terms of their signed admission agreement, or has engaged in use or production of a controlled substance in the residence. Otherwise, a thirty-day notice is required.

The following should not occur:

- A resident is forced to move out without due process – including providing adequate notice.
- A provider discharges/evicts a resident for an issue that was not included or described in the admission agreement that was signed by the resident.
- An admission agreement is used inappropriately to force a resident to waive certain rights under “house rules.” For example, an admission agreement cannot state that a resident is prohibited from having any visitors.

Regulation

Each individual has privacy in their sleeping or living unit:

1. Units have entrance doors lockable by the individual, with only appropriate staff having keys to doors as needed.
2. Individuals sharing units have a choice of roommates in that setting.
3. Individuals have the freedom to furnish and decorate their sleeping or living units within the lease or other agreement.

Intent

Individuals have the same rights as any of us have in our own homes, be that a rental or otherwise. It is intended to ensure individuals have the privacy they desire and can lock their bedroom doors if they choose. Just like anyone in their own home or in a rental home they should be able to come and go as they choose. No one wants to share a room with a stranger, so providers must have a process where individuals have a say in who their roommate is. Finally, this regulation is intended to ensure that the person's living space feels like home and can be furnished or decorated as they choose.

Examples

- Individuals in a CFH or a RALF are free to have a lock on their bedroom door and to lock the bathroom when they use it.
- There is a process in place that allows individuals to meet potential roommates and the provider understands and respects what the individual is looking for in a roommate.
- Individuals are free to decorate their rooms as they choose. Someone who really enjoys the color purple may choose to decorate their room with purple curtains, pillows, and throw rugs that they have purchased.

Best Practice Suggestions

- Residents have a lock on their bedroom door if they choose.
- There is a way for residents to come and go from the home even if the front door is locked. For example, they can ring a bell or request a key prior to leaving.
- There are clear policy and procedures in place to support this requirement.
- A "These are Your Rights" document is posted in a public area for individuals to see.
- You have a safety plan in place for use in an emergency situation if the bedroom or bathroom door is locked.

- You have a process in place that is documented that supports individuals in selecting a roommate that is compatible.
- Individuals are free to decorate their rooms as they choose, within reasonable limitations that might occur in any rental situation.
- Individuals are allowed to bring their own furniture to this setting.
- Individuals can hang pictures, adjust lighting, etc. in their bedrooms as they desire.

Additional Guidance

Where do individual rights and health and safety intersect with this regulation?

Providers have a responsibility to protect the health and safety of the individuals in their care at all times. When there is a medical reason or a verifiable health or safety concern that would direct a provider to limit this right, it must be documented in the person-centered service plan and the process for making this exception must be followed as outlined in rule. But this does not mean a provider can arbitrarily say, for example, “I can’t let this individual lock his door because he may watch something inappropriate on his TV.” All residents have the right to privacy unless there is a documented health and safety concern. Residents may have differing values, religious orientation, sexual orientation or political beliefs. Those must be respected. Those differences most likely do not pose a health or safety risk.

The following should not occur:

- The setting has a blanket policy that no bedroom locks are allowed.
- The setting locks the front doors at a certain time each night and all residents must be in before that time.
- Residents meet a new roommate the day that person is moving in and there is no process in place to make changes if that relationship does not work out.
- An individual’s bedroom is furnished by the provider with no input from the individual and decorations are restricted beyond normal landlord tenant norms.
- Bedrooms are pre-furnished and must look identical for all residents; there is no option to personalize the space.

Regulation

Individuals have the freedom and support to control their own schedules and activities, and have access to food at any time.

Intent

Individuals control their day-to-day lives in the same way other community members do. This includes control over when and what they eat.

Examples

- An adult individual living in a RALF has a part-time job early in the morning a few days a week. He has to wake up very early and he misses breakfast on those days. The provider accommodates his schedule by helping him set his alarm clock and being flexible with mealtimes.
- A CFH provider serves a resident with a number of medical appointments each week. The other resident of the home enjoys going to the library and the community center often. The CFH provider sits down with both residents each Sunday to plan their weekly activities so that both residents' needs and desires can be met.
- A large RALF does not keep its kitchen operating 24-hours a day. In order to ensure that residents have 24-hour access to food, they permit residents to have a small refrigerator in their living quarters for residents to keep food items and snacks they have purchased with their own monies. The kitchen facilities (plates, utensils, microwave) are also open if residents would like to prepare their own snacks in between meals.

Best Practice Suggestions

- Individuals are supported in planning their day-to-day activities.
- Individuals can ask for assistance if they would like to schedule appointments for services in the community or arrange for transportation.
- An activity calendar is posted in a common area for individuals to make decisions about the activities they would like to participate in.
- Individuals can buy snacks or food items with their disposable money and keep them in their bedroom or in their own cupboard in the kitchen.
- Individuals are allowed to share ideas and make choices about setting activities based on their own personal preferences and interests.
- A decision making process is in place that involves the individuals in order to make activity choices freely and fairly.

Additional Guidance

Does this regulation mean I have to leave the kitchen open 24-hours a day?

Not necessarily. You may opt to leave the kitchen accessible to residents who would like to prepare a snack or small meal in between regular meal times. Alternatively, you can allow residents to keep their own food items in their living quarters or in designated cupboards or spaces in the pantry that they can access whenever they would like.

I have a resident who makes poor food choices. Do they have to have 24-hour access to food?

Unless there is a documented risk to the individual's health or safety that requires the provider to restrict a person's access to food, a provider may not limit that access. A provider may not limit a person's access to food items solely on the basis that the provider has deemed something as "junk food" or due to the provider's personal beliefs or because the provider believes the individual is not a healthy weight. The provider should focus instead on helping the individual learn to make better food choices if that is an agreed upon goal in their service plan.

There may be instances in which 24-hour access to food poses a health or safety risk to an individual. In that case there may be a need to restrict food intake and that should be documented in the person-centered service plan.

The following should not occur:

- Requiring individuals to participate in activities in the residence's common areas.
- Restricting an individual's access to food because of the provider's personal belief that the individual is overweight.
- Making the food pantry the only food storage in the residence, and the only times food is available to residents is when the provider prepares regular meals or supplies a snack.
- Restricting whether an individual eats dessert or not based on if they finished their dinner.
- Limiting access to food as a punishment.

Regulation

Individuals are able to have visitors of their choosing at any time.

Intent

Individuals have the opportunity to develop close, private, and personal relationships without having unnecessary barriers or obstacles imposed on them. HCBS federal rules require that individuals be able to have visitors at any time, without restriction, just like anyone would have in their own home or rental unit. Providers should also not be screening who the individual has as a visitor. This does not mean that individuals can be inconsiderate of others' rights or the need for quiet and safety in the residence. It is intended to ensure that residents of RALFs and CFHs have the same freedoms any of us have in relationship to visitors in our own homes.

An Example

Visitors are allowed at any time. If it is after a certain time at night the doors to the residence are locked and the visitor must use the doorbell. All visitors are expected to be quiet and respectful of all residents. All visitors must sign in and out on the visitor log.

Best Practice Suggestions

- There are clear policy and procedures to support this requirement. The policy and procedures for visitation must address: that residents are allowed visitors of their choosing at any time, locations where visitation can occur which must include an option for privacy when with visitors, and how information on visitation is shared with residents. The policy and procedures must also be contained in the residents' right document, the resident handbook, or their admission/occupancy agreement.
- A sign in/sign out log for visitors is used and retained in the records as documentation of compliance.
- The rules around visitation and overnight guests are included in the residency agreement and posted in a public area for residents to see.
- Concerns about health or safety are addressed directly with the individual. If the provider implements visitation restrictions, that exception is documented in the person-centered service plan and the process for exceptions as outlined in rule has been followed.
- The "These are Your Rights" document is displayed for individuals to see.
- There is a policy and procedure in place on overnight guests.

Additional Guidance

Visitors should have access to all appropriate areas of the facility when visiting and should not be denied entry to common areas or the person's room. The facility may require visitors to sign in and/or notify the facility administrator that they are in the residence or complete other procedures to ensure the safety and welfare of residents and staff. However, procedures should not unnecessarily restrict visitors for the convenience of staff or restrict the person from freedom of association with those they choose.

It is understood that in a shared living situation the needs of other residents must also be respected. There should be an effort to communicate and coordinate all aspects of visitations between the affected parties rather than having blanket house rules restricting when and how a person can receive visitors.

The following should not occur:

- The provider determines who may visit and who may not, based on their own feelings about the character of the visitor.
- The setting imposes visitation hours for all residents.

Regulation

The setting is physically accessible to the individual.

Intent

The setting where an individual resides is structured and designed in such a way that the individual can freely move about within their residence and into/out of the home.

Example

A RALF has wheelchair-accessible doorways in the common area and a wheelchair-accessible bathroom if a resident requires the use of a wheelchair.

Best Practice Suggestions

- Have a conversation with an individual about their accessibility needs upon move-in.
- Encourage a new resident to do a walkthrough of the common areas and their living quarters with you to identify any potential issues.
- Help a resident rearrange their bedroom furniture if needed to make sure they can safely maneuver in their living space.
- Regularly check for fall or trip hazards, such as loose rugs, uneven surfaces, etc.

Additional Guidance

Does this look different for RALFs and CFHs?

No, this requirement applies equally to RALFs and CFHs. Common areas in those types of homes should be accessible to the people that live there.

The following should not occur:

Limiting individuals who require the use of a wheelchair or walker to only their bedroom and the dining hall because the doorways to the kitchen and activity room are too narrow.

Regulation

Any exception of the provider owned or controlled residential setting requirements must be supported by a specific assessed need and justified in the person-centered service plan. The following requirements must be documented in the person-centered service plan:

- Identify a specific and individualized assessed need.
- Document the positive interventions and supports used prior to any modifications to the person-centered service plan.
- Document less intrusive methods of meeting the need that have been tried but did not work.
- Include a clear description of the intervention that is directly proportionate to the specific assessed need.
- Include regular collection and review of data to measure the ongoing effectiveness of the exception.
- Include established time limits for periodic reviews to determine if the exception is still necessary or can be terminated.
- Include the informed consent of the individual or decision making authority.
- Include an assurance that the interventions and supports will cause no harm to the individual.

Intent

The setting qualities described in the provider owned or controlled residential setting regulations (above) are only limited or modified when it is necessary because of an individual's health and safety needs – and those exceptions are implemented in a systematic and person-centered way with the individual's consent. This is intended to prevent unnecessary or arbitrary limitation on an individual's right to enjoy the same freedoms that all community members enjoy in their own homes.

Examples

- *Freedom to control activities:* An individual with Alzheimer's disease has a history of wandering so it can be dangerous for her to freely come and go from the Residential Assisted Living Facility where she lives. The oversight registered nurse (RN) documents in the service plan that the individual has left the facility unattended three times in the last two months and could not find her way back. The oversight RN identifies with the individual and her person-

centered planning team that she must only leave the facility with appropriate support and she is assisted in understanding and following that restriction.

- *Access to food at any time:* An individual with a developmental disability has Prader-Willi syndrome, a condition which causes him to ingest large quantities of food. He and his physician are working together to manage the condition. In the meantime, he and his guardian have worked with his person-centered planning team to determine that limiting his access to food items will help him remain healthy. The CFH home will help the individual build his skill set to work toward the ability to manage his food intake independently.
- *Locks on doors:* An individual recently diagnosed with severe schizophrenia has exhibited self-harming behaviors. He, his provider, and his person-centered planning team have agreed that having a lockable bedroom door puts him at risk for serious injury or death if he engages in self-harm and a staff person is not able to reach him immediately. They determine that the provider will temporarily remove the lock from the door and implement a regular schedule of staff checking on the individual for three months while the individual and his psychiatrist work on identifying a balance of medications that fit his needs. The provider and individual will revisit the issue in three months to determine if they can reduce staff checks and add the lock back onto his bedroom door.

In all of these examples, the provider must work with the person-centered planning team to address all requirements and steps necessary to implement a modification.

Best Practice Suggestions

- There are clear policies and procedures that outline how and when you pursue a modification.
- Maintain an open line of communication with the individual and his or her guardian, when applicable.
- Modifications should be discussed with the individual at least annually (and more frequently as necessary) so that you, the individual, and his or her person-centered planning team can determine if the modification is still needed.

Additional Guidance

How do I request an exception for my resident?

If you are a residential provider and have identified a health and safety risk to an individual in your care, you will need to collect documentation of the risk and contact the individual's plan developer. The person or entity who is the plan developer will depend on the individual's Medicaid program – see program specific “links for more information” above for the process specific to each program. The plan developer will work with the individual, you, and other members of the person-centered planning team as needed to ensure the appropriate information

is documented on the individual's service plan and to ensure that the individual has consented to the exception.

The following should not occur:

- Limiting an individual's rights because it is convenient for the provider or guardian.
- Implementing an exception without consent of the individual and their guardian (when applicable).
- Putting a "blanket" exception in place for all individuals living in a setting, regardless of their individualized needs and abilities.