



Modifications under the HCBS Settings Rule For Waiver Providers

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Who does the HCBS Settings Rule Impact?

The HCBS Settings Rule applies to all individuals who receive 1915 (C, I and K) services. In Virginia, this impacts individuals who receive services from the Community Living (CL), Family and Individual Supports (FIS), Building Independence (BI) and CCC+ (Commonwealth Coordinated Care) Waivers.

- **Affected DD Waiver settings include:**

- Group Homes
- Sponsored Residential Homes
- Supported Living
- Group Day
- Group Supported Employment
- In-Home
- Personal Care



What If There's a Health & Safety Concern?

If a service provider wants to restrict any of these HCBS rights, there are requirements that **HAVE** to be met.

- The restriction has to be due to a health and safety concern.
- Accessibility can **NEVER** be modified or restricted.

Description
of concern

Support before
changes

Failed
attempts

I Agree

Ways to measure
success

Regular review

No harm

Modifications must be Individualized

HCBS Settings Rule Modifications (restrictions) **MUST** be individualized to the person and **NOT** in place for the entire setting or program. Modifications are **NOT** one size fits all.

Common setting-wide restrictions for residential supports:

- Bed checks for everyone
- Everyone is on a low calorie/low fat diet
- No alcohol and no smoking policies
- Set visiting hours
- Bowel movements are tracked for everyone
- Food is locked up
- No eating/drinking in bedrooms
- No overnight visitors
- Restrictions on usage of personal devices – cell phones, tablets, computers, etc.
- Weekly allowance



Modifications

- You are required to have a specific modification section in your HCBS policy. You are responsible for following your own policy.
- Ongoing staff training on modifications and HCBS requirements will improve consistency in all settings owned or operated by the provider.
- The modification process does not negate any required Human Rights process. Please reach out to your local Human Rights advocate if you have questions regarding the Human Rights regulations.
- When all options for less restrictive interventions have been tried without success to support an individual's health and safety needs, a provider can implement a modification of a residential-specific right.
- The process for implementing rights modifications is person-centered. It ensures that the individual fully understands and agrees to the modifications.
- If a modification is required, it is not expected to remain in place forever.

Determination

To determine if a modification is necessary, ask the following questions:

1. Are any of the residential specific protections causing a health and safety concern for the individual receiving services?
2. Have less intrusive interventions been used? This could include specific staff supports, natural supports, specific services (AT, TC, etc.).
3. Will the proposed modification do no harm to the individual?
4. Does the individual/guardian/authorized representative consent to a modification?

Modifications

- A provider is required to collect data on the intervention and review the modification on an ongoing basis.
- Data collection and review must measure the ongoing effectiveness of a modification.
- Modifications must be reviewed at time limits that are established by the provider (monthly, quarterly, etc.) At this review, the ability to terminate the modification must be discussed.
- The modification must be documented in the **Safety Restriction Form** located in WaMS. This is found in the provider ISP section.

Mary's Story

Mary has a history of eating non-food items (PICA). When staff offered Mary a key, she attempted to eat it. Staff discussed the idea of a key-pad entrance, but Mary's motor skills are a barrier to this option. As such, Mary's right to access her bedroom key has been modified.

Modification: The staff will keep Mary's key in a closet. She will inform staff when she would like to lock her door. Mary consented to this modification, it is documented in her ISP, and the provider follows the process to review the modification from time to time.

Mary's Story: Discussion and Checklist

- ✓ Mary's attempt to eat the key is a health and safety concern.
- ✓ Staff explored less restrictive options (key-pad) and documented the results.
- ✓ Mary consented to this modification.
- ✓ Staff documented the modification
- ✓ The data collection elements are included in Mary's plan
- ✓ The provider will review the modification quarterly when completing her person-centered reviews.
- ✓ The Safety Restriction Form is completed in the Part V.

Justin's Story

Justin spends a great deal of time on social media and dating apps. He has made connections with many people online and has been taken advantage of in financial schemes and catfishing. Justin recently made several new online connections and invited them to his house (group home setting).

Justin did not know these people and provided them with an invitation to the home and his address and phone number. Strangers have shown up at Justin's group home.



Justin's Story (continued)

Staff discussed with Justin the safety risks of his choices and explained boundaries with strangers. Justin's mother also discussed safety awareness with him and encouraged him to meet people in public places. Justin said he feels pressure to make his online friends happy.

Modification: Justin and his support team decided that Justin's right to have visitors at any time requires a modification until additional safety awareness skills are acquired. Justin agreed that meeting people in public places (coffee shops, parks, restaurants, etc.) would be a safer option than inviting people to his home.

Justin's Story: Checklist

- ✓ Justin's internet behavior causes a safety concern.
- ✓ Natural and paid supports have provided education and support to Justin to address the unsafe behavior.
- ✓ Justin consents to the modification.
- ✓ Justin is not fully restricted from meeting his new internet friends, he will have the option to meet in safer, public settings.
- ✓ Staff will provide ongoing education and support to Justin to teach safe online behavior. This support is included in Justin's plan and the modification will be reviewed quarterly.
- ✓ The Safety Restriction Form is completed in the Part V.

HCBS Modification Form in WaMS

The screenshot displays the WaMS interface for the HCBS Modification Form. The top navigation bar includes tabs for Reports, Waitlist, Slot Management, and Person's Details. The 'Part V: Plan for Supports - Summary' tab is selected and circled in red. Below the tab, the status is 'Part V Completed'. A 'Back to Summary' button is on the left, and 'Summary' and 'Expand All' buttons are on the right. A large black arrow points to the 'Service and Outcomes' section in the list of sections.

- Instructions
- Service and Outcomes
- General Schedule of Supports
- Signatures
- Safety Restrictions

Safety Restrictions / HCBS Modifications

Safety Restrictions

As your provider, we have identified something you want to do that might create a risk. We need your input to develop a plan that supports you to have what you want in a safe way. We have determined that this restriction is necessary to achieve a therapeutic benefit, maintain a safe and orderly environment or to intervene in an emergency and that all possible less restrictive options have been tried. [12VAC35- 115-100].

I understand that I will not The restriction/Modification

This is necessary because The outcomes in my plan related to this restriction include Related Outcome in Plan

The following is to be completed by a qualified professional. Describe your assessment, to include all possible alternatives to the proposed restriction that take into account the individual's medical and mental condition, behavior, preferences, nursing and medication needs, and ability to function independently.

Description of concern

Describe other less restrictive, positive approaches that have been attempted to meet safety needs based on the person's medical and mental condition, behavior, preferences, nursing and medication needs, and ability to function independently.

Failed attempts, support before changes

Safety Restrictions / HCBS Modifications

Is this proposed restriction necessary for effective treatment of the individual or to protect him or others from personal harm, injury, or death ☒ YES ☐ NO

Describe how progress toward resolving the restriction(s) will be measured **Ways to measure success**

Describe how often restriction(s) will be reviewed **Regular Review**

Describe conditions for removal of restriction(s) **No harm / give specific details**

Safety Restrictions Signatures: I understand that taking the actions listed can create a safety risk. I understand the reason for the restriction, the criteria for removal, and my right to a fair review of whether the restriction is permissible. When utilized, I understand that the proposed restriction will not cause harm and give my consent to participate.

Signatures **Must include Individual's signature**, as well as AR/Guardian

HCBS Modifications – Justin (Sample)

Safety Restrictions

As your provider, we have identified something you want to do that might create a risk. We need your input to develop a plan that supports you to have what you want in a safe way. We have determined that this restriction is necessary to achieve a therapeutic benefit, maintain a safe and orderly environment or to intervene in an emergency and that all possible less restrictive options have been tried. [12VAC35- 115-100].

I understand that I will not [Invite online friends over to my home.](#)

This is necessary because the outcomes in my plan related to this restriction include

[Social, Safety & Security, Integrated Community Involvement](#)

The following is to be completed by a qualified professional. Describe your assessment, to include all possible alternatives to the proposed restriction that take into account the individual's medical and mental condition, behavior, preferences, nursing and medication needs, and ability to function independently.

[Justin, residential provider, SC discussed the fact that Justin has given out his personal information to strangers online which has resulted in safety risks.](#)

Describe other less restrictive, positive approaches that have been attempted to meet safety needs based on the person's medical and mental condition, behavior, preferences, nursing and medication needs, and ability to function independently.

[Staff discussed safety risks of his choices and not having boundaries with strangers. Justin's mother also discussed safety awareness with Justin and encouraged him to meet online friends in public places vs. in his home. Justin states that he feels pressure to make his new friends happy and this has resulted in past financial exploitation and catfishing.](#)

HCBS Modifications – Justin (Sample)

Is this proposed restriction necessary for effective treatment of the individual or to protect him or others from personal harm, injury, or death X YES ☐ NO

Describe how progress toward resolving the restriction(s) will be measured

Justin does not provide his personal information to those that he does not know for 90 days. Justin responds to his new friends by meeting in public places for initial meetings and staff will support him with transportation.

Describe how often restriction(s) will be reviewed

This restriction will be reviewed quarterly and documented on PCR.

Describe conditions for removal of restriction(s)

Justin is able to maintain his safety of exploitation and not be easily influenced by others. Justin does not feel pressured to invite strangers over.

Safety Restrictions Signatures: I understand that taking the actions listed can create a safety risk. I understand the reason for the restriction, the criteria for removal, and my right to a fair review of whether the restriction is permissible. When utilized, I understand that the proposed restriction will not cause harm and give my consent to participate.

Signatures

What is NOT a Modification

-Eric works at Target and his shift begins at 9am. In order to make it to work on time, Eric must wake up at 7:30am. Eric does set an alarm on his phone, but he often sleeps through it. Eric has asked his residential staff to support him by waking him up no later than 7:40am if he sleeps through his alarm. This is **NOT** a modification to Eric's ability to direct his own schedule. This is a requested support that is outlined in his part V and implemented by his support team.

-Jordan is prone to losing his front door key. As a result, Jordan's sponsored provider keeps the front door key in a lock box outside of the garage. Jordan knows the code for the lock box and is able to access the key whenever needed. This is **NOT** a modification to Jordan's ability to access the key to his home. He has access to the key and feels satisfied with the current set-up.

What is NOT a Modification


-Tristan resides in a sponsored residential setting. He has limited motor skills and requires full staff support with all ADL needs. His Part V outlines his support needs and gives staff specific instruction for how to best provide him privacy. Tristan is left alone while using the toilet and knocks on the wall when he is ready for staff to support him. This system provides Tristan with privacy and dignity. This is **NOT** a modification to his right to privacy. It is simply the level of support needed to help him complete ADL tasks.

-Rashan likes to live in a minimal environment. He does not like bright colors, items on his walls or any tabletop decorations. Rashan's only décor request is black-out curtains in his room. Rashan's support team did notice that he seems to like the color blue and selected a blue comforter and pillowcases. Rashan's room is minimal, but this is **NOT** a modification. This is his preference and does not require a modification.

Modification or Not?

- Joe is taking a new medication that negatively interacts with alcohol. He has visited the ER three times in the past six weeks due to medication interaction with alcohol. Joe's doctor recommended that he have no more than one alcoholic drink within a 48-hour period. After the first ER visit, staff worked through an informed decision-making process with Joe when he was contemplating drinking; however, he continued to choose to drink multiple days in a row, putting his health at risk again.
- Jaden needs his wheelchair for mobility. Jaden's house has a basement with stairs leading to the laundry room. Jaden's staff reports that he doesn't like to do his laundry, so he never wants to go down to the basement and staff will continue to do his laundry for him.
- Jane has dementia and a history of wandering off and getting lost. This places Jane's health and safety at risk. The team would like to use a GPS monitoring device so that Jane can be quickly located if she leaves the home without anyone knowing.
- Jose likes to stay up late talking with his friends on his tablet. Therefore, he likes to sleep in most mornings. His residential provider stated that he must wake up in time to go to his day program as they have no staff in the home during the day. His residential staff want to restrict his tablet usage to end at 9 pm and to be locked up till the morning.

Modification Summary

- A modification should not be used because the provider believes that the individual is incapable of exercising his/her/their HCBS rights. **HCBS rights are inherent Human Rights and Civil Rights.**
 - A modification should not be used to restrict people from doing things the provider is uncomfortable with.
 - A modification must be reviewed with progress/termination discussed regularly with the individuals' team (Individual, family/guardian, service coordinator, provider, behavioralist, etc.)
 - A modification should only be used for health and safety reasons.
 - **Accessibility** (Physical and Programmatic) **CANNOT** be modified.
 - A modification must follow the process outlined in the settings regulation (modifications are justified and documented, with alternatives, consent given, and revisited regularly by the provider.)
 - The Provider's job is to **support** individuals and help them to **build skills and learn independence.**
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HCBS Resources

Statewide Waiver Transition Plan for review:

- [Addendum to the Commonwealth of Virginia's Statewide Transition Plan February 2019](#)

HCBS Toolkit

The Toolkit can be located on the DMAS Website:

- <https://www.dmas.virginia.gov/for-providers/long-term-care/waivers/home-and-community-based-services-toolkit/>

You may also reach out directly to DMAS

- hcbscomments@dmas.virginia.gov



HCBS Resources

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Questions?

