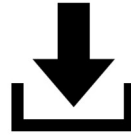


# The Download



## Guidance on the HCBS Settings Rule

### The HCBS Settings Modifications Process

An HCBS settings modification is an agreed-upon restriction implemented in the provider's setting to limit an individual's rights in order to address an identified need or health and safety risk. The Centers for Medicare and Medicaid Services (CMS) have determined that the following **MUST** be met to implement an HCBS Settings Modification:

- The modification must address a specific individualized assessed need (not everyone living in the home should have the same modification)
- Prior interventions and supports have been tried that are less intrusive (Documentation needs to exist to support this)
- Description of condition/concern
- Ongoing data measuring the effectiveness of the modification
- Established time limits for periodic review of the modification and its effectiveness (recommend at least quarterly)
- Assurance that interventions and supports with the modification will not cause any harm to individual
- Individual agrees to the modification (This consent is the most important!)

**REMINDER:** Accessibility can **NEVER** be modified (physical and program). **Modifications must be documented in the Safety Restriction Form located in WaMS.** This is found in the provider ISP section and should be reviewed by the Support Coordinator.

**IMPORTANT:** 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.



### MODIFICATION OR NOT?

*Read the following scenarios and decide whether a modification should be in place or not. Answers are on the next page.*

1. Joe has a history of drinking excess at times and takes medication that interacts negatively with alcohol. Joe has been to the ER 3x in the past 6 weeks due to medication interaction with alcohol. Doctor recommended no more than 1 alcoholic drink within a 48 hour period due to these interactions.
2. Judy needs a wheelchair for mobility. Judy's house has a basement with stairs leading to the laundry room. Judy's staff reports that she doesn't do her laundry and staff does it for her, so she doesn't need access to the basement.
3. Carmen likes to stay up late talking to her friends on her tablet, and wants to sleep in as a result. Her residential provider needs her to get up on time to go to her day program, as they do not have staff at the home during the day. Residential staff want to restrict her tablet usage to end at 10pm and to be locked up till the morning.





## Information Regarding Leases

The HCBS Settings Rule states that in a provider owned or operated residential setting, an individual must have a signed lease or other legally enforceable agreement outlining his/her protections against eviction, with appeals processes explained. The suggestions below are intended to provide non-legal guidance to owners and providers regarding leases and what is required according to the HCBS Settings Rule:

- ✓ The lease/agreement must be legally enforceable in the Commonwealth of Virginia.
- ✓ The lease/agreement **SHOULD** contain:
  - Property address and individual's name
  - Provisions relating to the length of the lease/agreement
  - Provisions relating to the date rent is due, the rent amount, and any proration of the rent amount and any associated late fees.
  - Rent amount must be a dollar amount and not a percentage.
  - Provisions describing what the rent includes (utilities, internet, etc.)
  - Provisions that clearly articulate the grounds on eviction, process and timelines for eviction. The language must follow that Virginia Landlord Tenant Act. [Tenant and Landlord Resources | DHCD](#)
  - Signatures of individual and representative payee
- ✓ The lease/agreement should **NOT** contain:
  - Program rules
  - Restrictions on individual being able to decorate their room
  - Limitations on visitors
  - No alcohol and no smoking policies
  - Limitations on phone use and electronic devices
  - Statements stating that individual has to comply with behavioral plans, taking medications, specialized diets, etc.
  - Curfew
  - Mandate that the residential provider must be the individual's representative payee

The lease should be comparable to a lease for anyone renting a home or apartment (not receiving HCBS services).

## HCBS Settings Rule Resources



### BEYOND COMPLIANCE

Includes a free webinar on how providers can continue to transform the supports they provide. Also includes a slide deck. [Beyond Compliance: Embracing The Values of the HCBS Settings Rule - The Council on Quality and Leadership](#)



### HCBS TOOLKIT

This is the HCBS Toolkit that has great resources and sample policies for providers. [Home and Community Based Services Toolkit](#)



### TRAINING SLIDES

Scroll down to the HCBS tab for HCBS specific trainings and slide decks.

[Developmental Services - Virginia Department of Behavioral Health and Developmental Services \(DBHDS\)](#)

#### Modification or Not Answers:

**A. Yes** (Documented Health and Safety Concern)

**B. No** (Accessibility can never be modified),

**C. No** (Not a Health and Safety Concern)

#### What do I do if I see a HCBS Settings Rule Violation?

Report it to your local Human Rights Advocate at the link below:

[OHR Contact Information - Virginia Department of Behavioral Health and Developmental Services \(DBHDS\)](#) When in doubt, report it.