

# A Focus on Modifications under the HCBS Settings Rule

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# Welcome

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# Housekeeping

Please:

- Use chat ONLY for immediate technical issues
- Use Q&A button to ask questions
- Click closed captioning (cc) in order to see the live transcript
- Complete the evaluation that will be sent in the follow-up email

The recording will be uploaded to the FSSA YouTube Channel after the live sessions have been conducted



<https://youtu.be/RJ1aYsFTDS4>







# Agenda

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- ❖ HCBS Settings Rule
- ❖ Positive interventions and support
- ❖ Modification process
- ❖ Role of the Human Rights Committee

# HCBS Settings

- Integration

- Access

- Choice

- Privacy, Dignity, Respect

- Initiative, Autonomy, and Independence



# HCBS Settings Rule: Rights

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The HCBS settings rule requires these rights for people with disabilities who are receiving waiver services:

- ✓ People have a right to privacy
- ✓ People have a right to make choices
- ✓ People have a right to choose where they get help and services
- ✓ People have a right to be around other people in their community
- ✓ People have a right to do the same things in the community that everyone else does
- ✓ People have a right to do things in the community with people who do not have a disability
- ✓ People have a right to get a job working with people who do not have a disability





# Homes that the HCBS waiver provider owns or controls (POCO)

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People are in charge of the things that belong to them including their money and belongings



People decide what to eat and when to eat



People are in charge of their schedule and what they do each day



People can have visitors of their choosing at times they choose

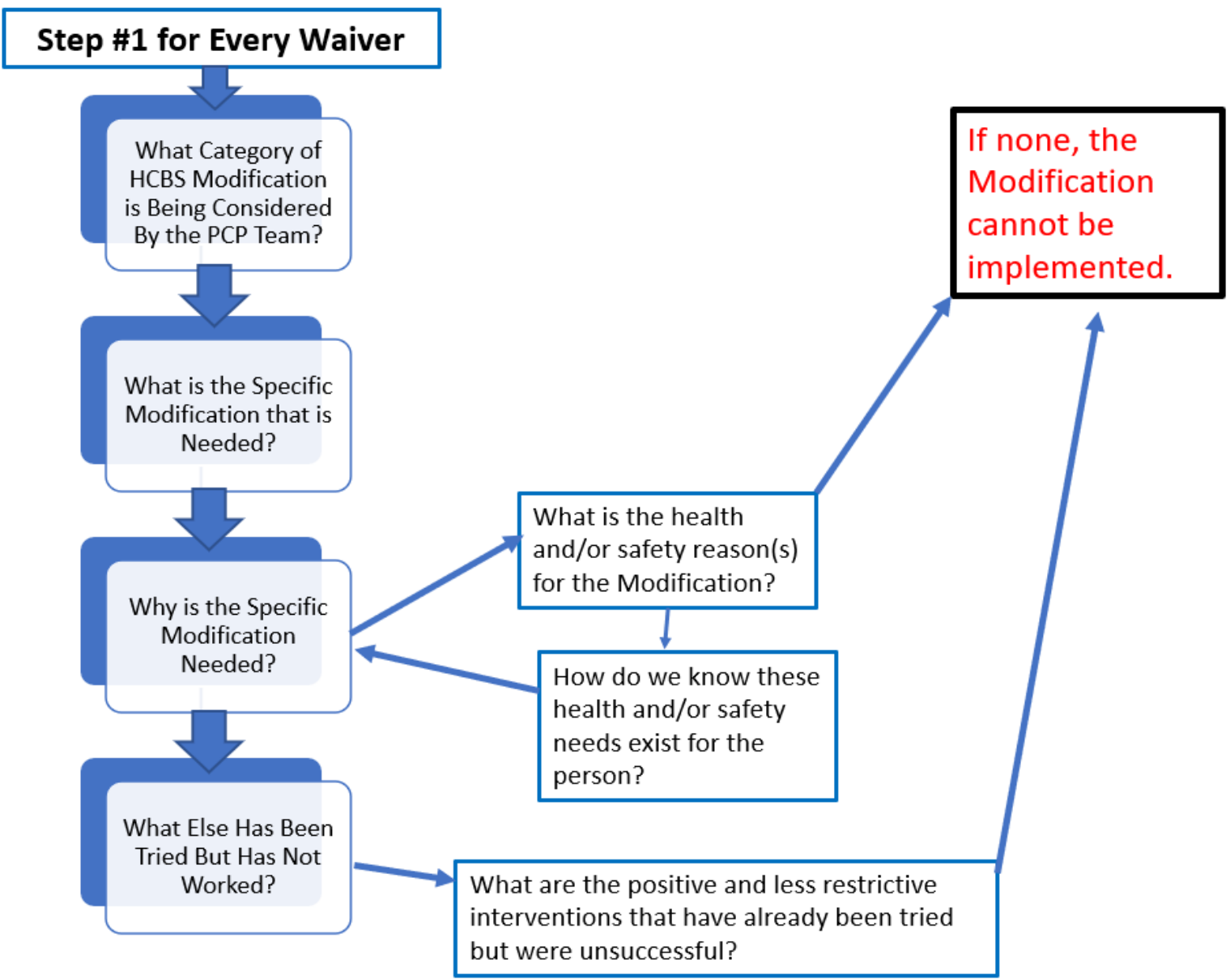
# Homes that the HCBS waiver provider owns or controls (POCO)

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People should have opportunities to:

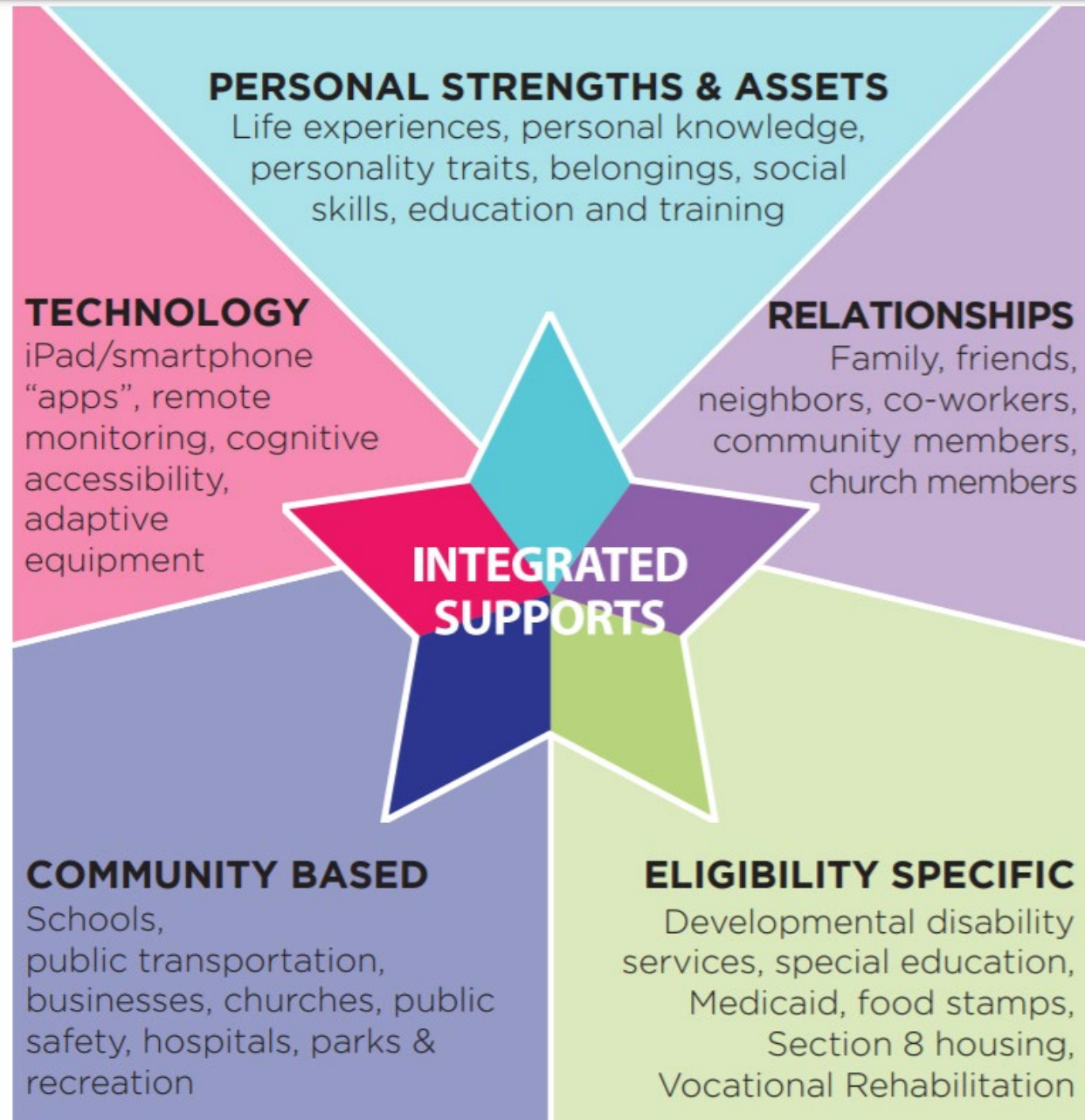
- leave their home and get back inside
- choose their roommates if they share their home
- have a lock on their door and have their own key
- decorate their room and personal space the way they want to
- continue living in their home until their lease ends (unless there is a legal reason requiring them to move out sooner)
- **get to all areas of their home**





[https://www.maine.gov/dhhs/sites/maine.gov.dhhs/files/inline-files/HCBS-Right-Modifications-FAQ\\_0.pdf](https://www.maine.gov/dhhs/sites/maine.gov.dhhs/files/inline-files/HCBS-Right-Modifications-FAQ_0.pdf)

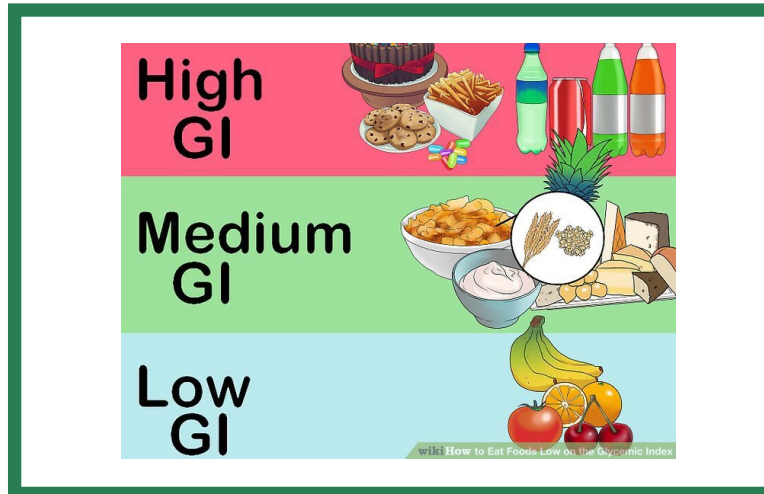
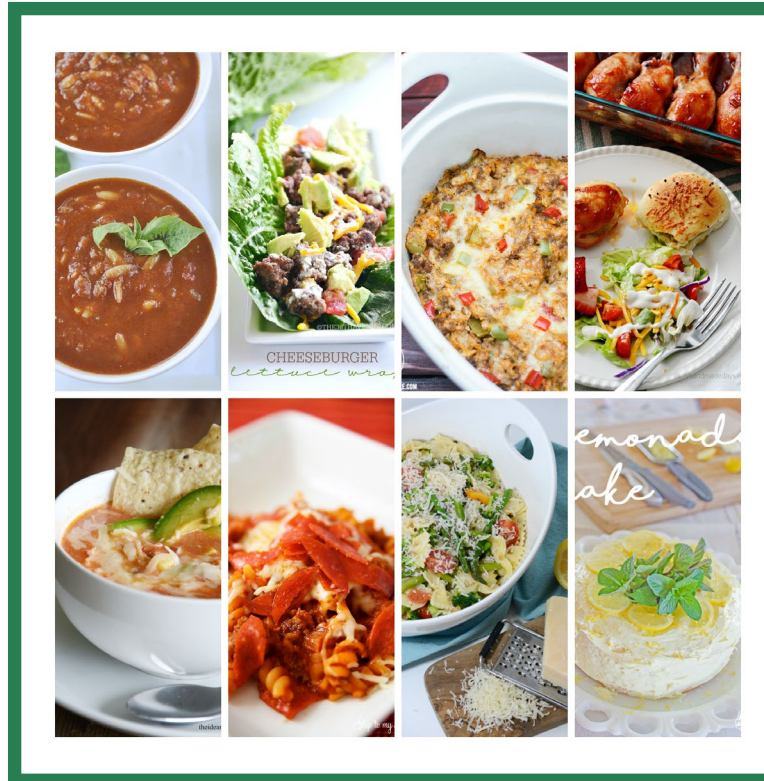




# Visitors



# Food and Drink



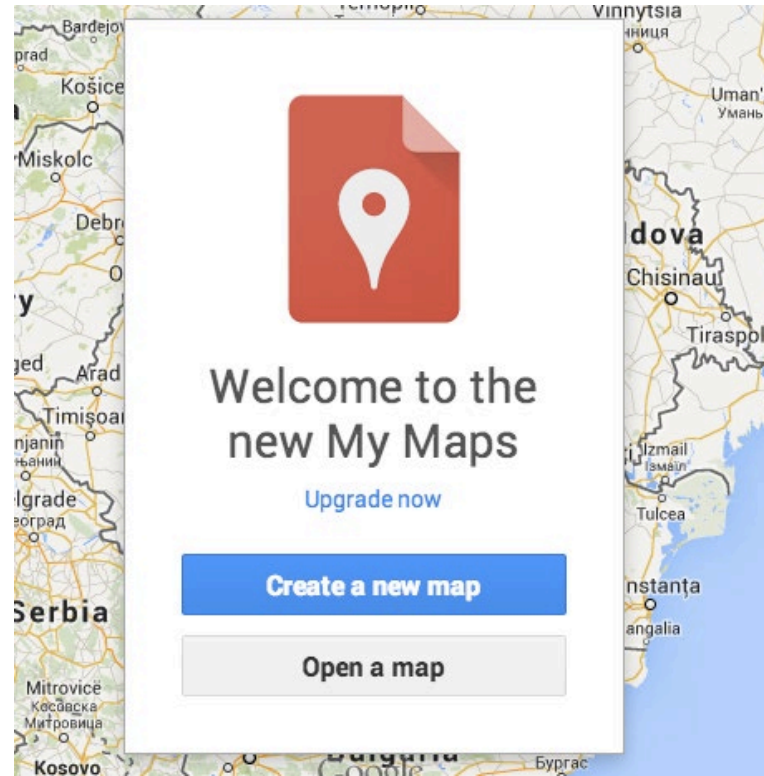
## Week 1

### Weekly Meal Planner (\* indicates recipe is included)

	Meal 1	Meal 2	Meal 3	Snack
<b>Day 1</b>	Whole-wheat toast with peanut butter Banana Nonfat milk	Egg and Cheese Puff* Fruit cup Nonfat milk	Calico Beans* Carrot sticks Corn muffin Canned pears Nonfat milk	Ranch Dip with Vegetables*
<b>Day 2</b>	Cereal with milk Whole-wheat toast with jam Orange juice	Peanut butter and jelly sandwich Carrot and celery sticks Nonfat milk	Stir Fry Dinner* Rice Tossed salad Pineapple chunks and apple slices Nonfat milk	Jello-Yogurt Fluff*
<b>Day 3</b>	Oatmeal with raisins English muffin Nonfat milk	Tuna Melt Macaroni Casserole* Lettuce salad Apple slices Nonfat milk	Ham and Cabbage Soup with Potatoes* Bread/crackers Orange slices Nonfat milk	Canned peaches
<b>Day 4</b>	Grapefruit Cereal with milk Wheat English muffin Apple juice	Turkey sandwich Carrot sticks Canned pears Nonfat milk	Quick Taco-Mac* Three-bean Salad* Nonfat milk	Raisin Bread Pudding*
<b>Day 5</b>	Cereal with milk Bran Muffin* Apple juice	Pizza Buns* Lettuce salad Banana Nonfat Milk	Red Beans and Fica Burritos (with salsa)* Broccoli spears Nonfat milk	Fruit and yogurt
<b>Day 6</b>	French toast with "fl" syrup Orange slices Nonfat milk	Chicken noodle soup Bread/crackers Ranch Dip with Vegetables* Nonfat milk	Broiled hamburger on bun Three-bean Salad* (planned-over) Nonfat milk	Banana
<b>Day 7</b>	Grapefruit Bran Muffin* Nonfat milk	Peanut butter and raisin sandwich Celery sticks Orange Nonfat milk	Beef Stew* Wheat bun Canned peaches Nonfat milk	Cereal snack mix

Menus adapted from publications by Cynthia Gardner, former NDSU Student Dietitian, and Suzanna Fundingsland, former Nutrition Specialist, NDSU

# Daily Schedules



# Visitors

*Video by Yaroslav Shuraev, pexels.com*





<https://youtu.be/sZApCZxj9WI>



# Modification

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It is a limitation to the rights of an individual due to a specific assessed need in order to support the health, safety, and well-being of the individual or the community.

It includes a plan for a specific individual to modify expectations associated with a certain HCBS standard.

# Modifications

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Specific individualized assessed need

Prior interventions and supports including less intrusive methods

Description of condition proportionate to assessed need

Ongoing data measuring effectiveness of modification

Established time limits for periodic review of modifications

Individual's informed consent

Assurance that interventions and supports will not cause harm



## HCBS Required Questions

In addition to the qualities that all home and community based settings are required to meet, the Centers for Medicare and Medicaid Services (CMS) requires, that provider owned or controlled residential settings must meet additional conditions. Specific to the life domain of Social and Spirituality, if the individual lives in a provider-owned or controlled home, the following questions must be asked and answered at least annually:

- Does the individual have the freedom and support to control their own schedules and activities?

### HCBS Remediation

Consistent CMS regulation, the IST must address and include the following elements within this section of the PCISP for **each** HCBS required question that is answered “no” by the IST:

- 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 condition** that is directly proportionate to the specific assessed need;
- Include a **regular collection and review of data** to measure the ongoing effectiveness of the modification;
- Include **established time limits for periodic reviews** to determine if the modification is still necessary or can be terminated;
- Include **informed consent of the individual**; and
- Include **an assurance that interventions and supports will cause no harm** to the individual.



*Video by Julia M Cameron, [pexels.com](https://pexels.com)*

## Scenario: Taylor



### Not Acceptable:

**Restriction:** Taylor has to earn their video game console. Staff are to keep the power cord and only give it to them in the afternoon if they have showered and attends day program for scheduled days. Staff is to remove the power cord every night at 9pm.

**Justification:** Taylor will stay up late to play video games and will refuse to attend day program the next day. They also refuse to shower and in the past has gone several days without showering.

### Acceptable:

**Restriction:** Taylor has agreed to not play violent video games and this should be enforced.

**Justification:** When Taylor views violent content they think it is real. Their behavior will escalate to physical assault and property destruction after playing violent video games, as documented in staff daily notes.



<https://medicaid.utah.gov/Documents/pdfs/ltc/hcbstransition/Files/RestrictModExamples.pdf>

# Other Individuals in the Same Setting

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If there is an individual with a media restriction in a group setting that limits any media/games, there needs to be options for other individuals in the setting to circumvent this restriction.

Examples could include:

- o Watching media/playing games on personal devices (such as phone, tablet, computer) in their private living space or with headphones if in a shared space
- o Having an agreed upon shared space media/game schedule (to include anytime the individual with a restriction is not in the home)

*<https://medicaid.utah.gov/Documents/pdfs/ltc/hcbstransition/Files/RestrictModFlyer.pdf>*



*Photo via pexels.com; scenario and examples from <https://medicaid.utah.gov/Documents/pdfs/ltc/hcbstransition/Files/RestrictModExamples.pdf>*





## Restriction

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Morgan's doctor has approved one beer/month as tolerated.

Morgan can have one alcoholic drink within a 48 hour period.



Justification: Specific and individualized assessed need. If applicable, a way for other individuals to circumvent.

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Doctor's orders.

Morgan has a history of drinking in excess at times. Morgan takes medication that has negative interactions with alcohol.

Morgan has been to the ER three times in the past 6 weeks due to medication interaction with alcohol.

The doctor recommended no more than one alcoholic drink within a 48 hour period due to the medication interactions



Previous Interventions: A clear description of the condition that is directly proportionate to the specific assessed need.

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Morgan's doctor has approved one beer/month as tolerated.

Morgan's alcohol consumption was not a concern prior to the addition of a new medication that has negative interactions with alcohol. The doctor and staff educated Morgan on the risks associated with the medication and alcohol. When Morgan required medical intervention (ER visit), staff had documented Morgan had chosen to drink alcohol 2-3 days in a row. After the first ER visit, staff worked through the informed decision-making process with Morgan when she was contemplating whether she should drink or not. This was not sufficient for Megan to choose not to drink multiple days in a row, putting her health at risk.



Data Collection: Less intrusive methods used that did not work. Previous positive interventions and supports tried.

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Document any medical intervention required.

Documentation will include the following:

Discussion with Dr about other medication options that don't interact with alcohol

Each time (date/time) Morgan consumes alcohol as well as any observed symptoms or any medical attention required.

Each time Morgan contemplates drinking, when staff has to implement the restriction versus when Morgan chooses to only drink one alcoholic drink within a 48 hour period.

**SAMPLE**

## Review: Regular collection and review of data to measure effectiveness

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Annually.

Will be reviewed at minimum, annually (via a formal process: Human Rights Committee, Person-centered planning process, etc.).

Data will be reviewed monthly.

Restriction can be terminated if the medication that has a negative interaction with alcohol is discontinued or when Morgan demonstrates she is able to choose (with or without staff support) to have no more than one alcoholic drink within a 48 hour period for 3 consecutive months.

**SAMPLE**

Approval: Established time limits for period reviews to determine if it is still necessary or can be terminated

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Only the guardian or representative signature:

Team/Committee Signatures (missing the signatures of the individual)

Individual's Informed Consent Signature:

Guardian's Informed Consent Signature (if applicable):

The following Team/Committee Members approve the above documented restriction attesting that this is the least restriction intervention identified to ensure the health and safety of the individual and none of the identified interventions or supports will cause harm to the individual or others

**SAMPLE**

Informed consent of the individual. Assurance that interventions and supports will cause no harm to the individual.

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**Has informed consent and HRC approval been received and uploaded into the Document Library?**

Restrictions require informed consent and Human Rights Committee approval. Case Managers will confirm the receipt of informed choice and Human Rights Committee (HRC) approval, or indicate it is not applicable in this life domain.



You are responsible to sign this form. Your signature shows that you participated in and understand the modification of your right (s) that your case manager/care coordinator and provider documented in this form. You also are responsible to indicate your decision to either agree to or not agree to the modification. Select one of the options below to indicate your choice.

**Your options**

The reason for a modification of my rights has been explained to me in a way that I understand. I also understand how my provider will provide the modification to ensure my health, safety and well-being.

**I approve of the modification(s) of my rights identified in this agreement.**

I understand that I may withdraw my approval at any time. If I withdraw my approval, I understand that my rights must be immediately and fully restored.

**I refuse for my rights to be modified.**

I understand that my health, safety and well-being may be at risk. My case manager/care coordinator and my provider will need to determine if my health and welfare can continue to be assured in this setting without the listed modification(s).



**Signature section**

PERSON	DATE
LEGAL REPRESENTATIVE	DATE



# Informed Consent

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The individual always leads the person-centered planning process where possible.

- If there is no guardian (or person with similar decision-making authority), then only the individual can grant, deny, or withdraw consent.
  - Consider supported decision making to assist the individual
- If there is a guardian (or person with similar authority), the court order must be consulted. Does it say the guardian can make this kind of decision?
  - For parents/guardians of minors, there will not be a court order relative to their rights. Parents/guardians of minors can grant, deny, or withdraw consent.

*<https://medicaid.utah.gov/ltc-2/hcbstransition/>*

# Refusal of Modification

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Each person, and/or their guardian (as applicable), has the right to refuse or withdraw consent to an HCBS right modification.

Document in the PCISP the steps taken to obtain the person's consent/signature. The case manager, provider and person and/or guardian (as applicable) will then need to assess, based on the risk factor, how they can continue to meet the person's health and safety needs.

*[https://www.maine.gov/dhhs/sites/maine.gov.dhhs/files/inline-files/HCBS-Right-Modifications-FAQ\\_0.pdf](https://www.maine.gov/dhhs/sites/maine.gov.dhhs/files/inline-files/HCBS-Right-Modifications-FAQ_0.pdf)*



## Red Flags

Modifying a person's rights because it is convenient for the provider or guardian

Implementing a modification without consent of the person and his/her guardian (when applicable)

Implementing a modification for all people living in a setting, regardless of their individualized needs and abilities



# Positive Behavior Supports

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1. Be strengths-based
2. Be culturally and linguistically competent/responsive to needs
3. Have focus on individual preference and choice
4. Be developed from an individualized assessment
5. Teach skills and/or strategies that aide in their autonomy
6. Not include a restrictive intervention unless necessary

# Human Rights Committee

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*Video by Diva Plavalaguna, pexels.com*



# Keeping the Promise

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“ We believe that we should have the same rights and opportunities as anyone else. People with disabilities should be, and are by right, equal to people without disabilities. This simple but revolutionary idea is what has guided all of our recommendations and discussions. We refuse to settle for less any longer. We demand for ourselves and for our peers a community that places us in a position of equality to our neighbors. We reject the old models of —**care** and —**charity** for a world that is instead ruled by rights, interdependence and true community.”

*Keeping the Promise: Self Advocates Defining the Meaning of Community Living*



<https://youtu.be/LUka52IKtdw>





**ALL people are empowered to live, love, work, learn, play and pursue their dreams.**







# We're In This Together

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If you need additional information,  
please contact us at

800-545-7763

[BDDS.Help@fssa.IN.gov](mailto:BDDS.Help@fssa.IN.gov)



# Resources

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*CMS HCBS Settings Final Rule* <https://www.medicaid.gov/medicaid/home-community-based-services/guidance/homecommunity-based-services-final-regulation/index.html>

*Home and Community Based Settings Rule: Information for Individuals and Families*, Indiana BDDS, March 2021 <https://www.in.gov/fssa/ddrs/files/HCBS-Settings-Rule-Fact-Sheet.pdf>

*A Provider's Guide to Putting the HCBS Rule into Practice*, Minnesota Department of Human Services, Disability Services Division; also New Jersey Department of Human Services, Division of Developmental Disabilities

*HCBS Settings Rule: Restrictions & Modifications*, Utah Department of Health: Medicaid, <https://medicaid.utah.gov/ltc-2/hcbstransition/>

*Behavioral Support Services: Service Definition and Standards*, Indiana DDRS, July 2020 [https://www.in.gov/fssa/ddrs/files/Behavior\\_Support\\_Service\\_Guidance.pdf](https://www.in.gov/fssa/ddrs/files/Behavior_Support_Service_Guidance.pdf)

Photos from Creative Commons or Pexels.com



# Stay Connected

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Sign up for the DDRS listserv:

<https://public.govdelivery.com/accounts/INFSSA/subscriber/new>

Follow the BDDS FB page:

<https://www.facebook.com/Indiana-Bureau-of-Developmental-Disabilities-Services-318818311807579/>







obrigado

Dank U

Merci

mahalo

Köszi

спасибо

Grazie

Thank  
you

mauruuru

Takk

Gracias

Dziękuję

Děkuju

danke

Kiitos