THE BUREAU OF DISABILITIES SERVICES

RESTRICTIONS and the SETTINGS RULE
March 2024
FREQUENTLY ASKED QUESTONS

ACRONYMS/DEFINITIONS

APS: *Adult Protective Services*

BSP: *Behavioral Support Plan*

CM: *Case Manager*

CMO: *Case Management Organization*

DSP: *Direct Support Professional*

HRC: *Human Rights Committee*

IST: *Individualized Support Team*

POA: *Power of Attorney*

POCOS: *Provider Owned or Controlled Setting*

Provider: *An entity approved by the BDS to provide services and supports to an individual.*

SA: *Service Authorization*

FAQs

1. Guardians tend to state to me that they override HCBS rules and will choose who their client works with, where they live, and if they can be alone in the community even if they have four hours of alone time. Clarification with HCBS rules and Guardianship is needed.

    If an individual receives HCBS services, all HCBS rules must be followed regardless of the legal status of the individual. A guardian is the guardian of that person and as a participant in the HCBS Waiver program is responsible for ensuring compliance with all HCBS rules. Failure to comply with HCBS rules may impact participation in HCBS services. ISTs should educate guardians on the requirements of participation in HCBS services.

2. Who is responsible for educating the guardians on the requirements of participation in HCBS services?

All IST members should be educating guardians based on training and information shared by BDS. It is also the responsibility of all IST members to become familiar with each individual's specific guardianship.

3. How should a situation in which the guardian buys the individual food that actually goes against their meal plan be handled?

   The IST should be meeting and discussing issues impacting the individual's life and that are important to the individual. A meal plan or modification should not be implemented without the agreement of the individual or their guardian and the IST. The IST shall ensure the steps for a modification are followed and documented.

   Individuals have the right to decide what to eat and when to eat. If the guardian is providing food that an individual does not want for any reason, the Individual has the right to refuse food.

4. How should it be handled when the provider has the individual change to daily rate? This change often reduces their budget and chosen services.

   Individuals are the drivers of their services and determine how best to live their good life. The IST supports this by discussing the differences between the daily rate and hourly rate specific to the individual's situation to ensure the individual can make an informed decision. Additionally, the individual has the right to revisit this decision at any time. The SA should not be changed without a discussion with the IST and informed consent of the individual.

5. If someone has a Social Security representative payee, do we need to have it in a BSP as a restriction and run it through HRC?

   No. A representative payee is determined by the Social Security Administration. However, the individual should be educated on their income, expenditures, etc.

6. Do teams need to have regular conversations and document the conversations to determine if individuals still need a Representative Payee with Social Security?

   ISTs and representative payees should to the greatest extent possible help motivate an individual to work toward more independent living, involve the individual in establishing a budget and making financial decisions, and continue to educate on the benefits they receive as well as the exploration of community integrated employment. If an individual feels as if they can be their own representative payee, then they should be supported to contact the Social Security Administration to become their own representative payee, if permitted by the SSA.

7. How do we ensure housemates' safety and protect their rights, if one of the housemates chooses to use the Internet to meet people and invites them over to the house. These are people we do not know and causes concern for all others involved. Internet safety, personal

and sexual safety and respect of the household education occurs and does not adjust the actions of this housemate.

An individual's friendships and relationships do not have to meet the "approval" of DSPs or other supports. In a shared living arrangement, all individuals living in the home have the right to visitors of their choosing. If there are disagreements regarding visitors, individuals should be empowered to discuss their concerns and work toward an agreement or creative solution. If no agreement or positive solution can be reached, a discussion may need to occur about the effectiveness of the living arrangement (recognizing that lease obligations may exist). The key is that the individuals involved should be equipped to drive the solution and to work toward any conflict resolution. ISTs should also support an individual to cultivate natural support and inclusion in the community. If a visitor in the home (or someone on the Internet) is committing a crime, the police should be contacted.

8. How much authority does a POA have to make decisions. POA rents a room to an individual at her home and then wants to control what staff are assigned.

   A POA does not remove rights from an individual. The individual retains the right to make all decisions when a POA is in place.

9. When discussing restrictions, can you provide an example of writing a restriction when it is for the housemate? For example, if the housemate has Prader Willi and needs the food locked.

   If a restriction is in place for a housemate, the ISTs for all other individuals in the home need to explore viable options that would alleviate the restriction for them. For example, the housemates with Prader Willi may need all food locked up. Can the other housemates have keys to the locks so they can access the food at any time?

10. Who is collecting this data, especially if BMAN is not currently in place?

    It is the responsibility of all providers supporting an individual to have data to support any restrictions. The IST should be discussing this expectation in all IST meetings, so it is clearly understood by all parties.

11. If the individual does not give consent for a restriction, what does the IST team do?

    The IST will need to explore other options.

12. If the legal guardian says they want the restriction in place, do we have to honor?

    If an individual receives HCBS services, all HCBS rules must be followed regardless of the legal status of the individual. A guardian is a participant in the HCBS Waiver program and is responsible for ensuring compliance with all HCBS rules. A restriction cannot be implemented if all the criteria are not met, including the agreement of the IST. Failure to comply with HCBS rules may impact participation in HCBS services. ISTs should educate guardians on the requirements of participation in HCBS services.

13. When a restriction has been discontinued, is there a specific HRC form to be completed and uploaded (re: removal of the restriction)?

    The removal of the restriction should be clearly documented in the PCISP.

14. Is informed consent always obtained from the individual, or if they have a guardian would consent be asked of them? What if they cannot give informed consent?

    Informed consent should be provided by the individual and their guardian, if applicable. The reason for a modification of an individual's rights should be explained to them in a way that they understand. Steps to obtain the individual's consent should be documented in the PCISP. If there is an inability to understand the restriction, then the IST may need to consider whether the individualized assessment truly determines that the modification is proportionate to the need.

15. Will this document eventually be a part of the monitoring checklist or need to be attached to the PCISP?

    A determination has not been made at this time.

16. Is the case manager to update the PCISP when a restriction has been removed, including medication?

    Yes. The PCISP should document all restrictions and removal of restrictions, including medications.

17. In the Morgan example, individualized rights vs liability?

    As part of any modification, ongoing data measuring the effectiveness of the modification should be collected. Additionally, an individual can choose to withdraw their consent for a modification. The case manager should document the decision by the individual to withdraw consent.

18. If POCOS requests a restriction and the rest of the IST disagrees, can the POCOS implement the restriction without IST approval?

    No.

19. What distinguishes a restriction that requires HRC approval from a restriction that only requires IST approval?

    Per the settings rule, all restrictions require HRC approval.

20. The POA wants to restrict who can be a caregiver. If they hold only a financial POA they would not be able to make these restrictions, would they?

    A financial POA may not restrict who can be a caregiver if the Individual disagrees with the restriction. A POA does not remove rights from an individual. The individual retains the right to make all decisions when a POA is in place.

21. Previously there was a restrictive intervention chart that showed non-restrictive, mild restriction, elevated restrictions, and prohibited restrictions. Will a new chart be created and available?

    A restriction is a restriction regardless of the type.

22. Can these restrictions and disabilities be a reason for APS to get involved or is that a different path for the individual?

    APS was established to receive and investigate reports regarding adults who may be endangered and, as appropriate, to coordinate a proper response to protect an endangered adult who is a victim of abuse, neglect or exploitation. If you suspect or know that an individual is experiencing abuse, neglect, or exploitation, you must follow all reporting protocols.

23. Which team member is responsible for reviewing and having the individual sign a rights modification consent?

    The team should discuss and determine who should be responsible.

24. In this situation with the seizures and locking the door, if an individual decides they want a seizure monitoring device so they can continue having their right to lock their door - would the monitoring device be a rights modification if the individual wants it to help with not only monitoring and also being able to keep this right?

    The individual has the right to lock their door regardless; however, they can work with their IST if they would like a seizure monitoring device. The individual, along with their IST, should determine how the device would be monitored and what would happen if a seizure was to occur. The discussions and decisions should be documented in the PCISP.

25. Can you please help me understand further in depth. Do we have to have HRC for the example of Olivia and her door being locked?

    If an individual wants their door locked and there is a modification to the door being locked, then yes, it requires HRC approval.

26. We always list guardianship, and representative payee as rights restrictions. Shouldn't we?

    Guardianship is determined by the courts and representative payee is determined by the Social Security Administration and therefore, do not require the approval of an HRC; however, ISTs should continue to promote independence and decision-making continually and if the individual is in HCBS services, then the settings rule must be followed.

27. If an ALGO level states 1:1 staffing and line of sight is that to be ignored or followed?

    The IST should work with the individual to determine what staffing level is appropriate within their allocation. Staffing levels can be restrictive and should be individualized.

Staffing requirements should be documented in the PCISP and if restrictive, should go through the HRC for approval.

28. Does BDS have assessments for alone time? How is this accurately assessed and determined as imposing "alone time" could be considered a restriction if the individual is an adult?
    The individual should be the primary driver in determining what level of staffing they feel is appropriate and within their allocation. If they have more staffing than they would like or need, then that would be a restriction.

29. Where does her choice to drink despite the attempts to caution, staff allows her to behave in the way she chooses to her detriment, liability falls where?
    As a provider you have the responsibility to educate the individual on good choices, the consequences of poor choices, and to document that these conversations occurred. Any responsibilities that the provider has to support the individual should be outlined in the PCISP. Assessing risk does not mean overlooking serious health and safety concerns; however, it should also be recognized that there will always be some level of risk in life and eliminating all risk should never be the goal because no one can eliminate all risk. It is important to consider how health and safety can be addressed in a way that works for the individual and their life while they make decisions and take risks that are important to them, realizing that some individuals may make choices that are not the same as we would make for them.

30. What if there are no providers and the parents are the guardians? Is a Plan or HRC required?
    If there are no providers other than case management, then there are no staff to implement restrictions.

31. What happens when a guardian restricts rights from an adopted adult individual from gaining a driver's license or the right to leave anytime, they prefer for fear they may make a wrong decision? No other providers are involved, and guardian is the only paid staff due to trusts with unknown staff.
    The decision that a relative is the best choice of persons to provide services is part of the person-centered process and is documented in the PCISP. This determination should be completed annually by the IST. Guardians as staff cannot use waiver funding to utilize restrictions that haven't met the criteria under the settings rule. The provider employing the guardian should ensure all paid staff are implementing restrictions as documented in the PCISP.

32. How does a Behavior Clinician move forward with HCBS rights modifications if another provider on the team, (i.e. day program or residential) are not participating or sharing data that correlates to the modification in question?
    A restriction cannot be approved or implemented without the necessary data collection. Any member of the IST can reach out to the BDS district office for support in this area.

33. If all restrictions require the same documentation and all require HRC approval, what is the actual difference between formal and informal restrictions?

    Formal restrictions are those modifications identified and agreed upon by the individual and the IST and are implemented and documented in the PCISP according to HCBS Settings Rule requirements.

    Informal restrictions are actions taken by staff, peers, family members, etc. that intentionally or unintentionally restrict an individual's rights. These informal restrictions often result from unconscious biases yet end up acting in much the same way as a formal restriction. Once identified, informal restrictions should be openly discussed and eliminated whenever possible. If the individual and IST desire to create a formal modification or restriction, the HCBS Settings Rule requirements must be followed.

34. Do all HCBS rules for restrictions apply to Representative Payees since they are appointed by SSA?

    ISTs and representative payees should to the greatest extent possible help motivate an individual to work toward more independent living, involve the individual in establishing a budget and making financial decisions, and continue to educate on the benefits they receive as well as the exploration of community integrated employment.

35. Is a provider who does not offer BMGO services allowed to require a BSP with restrictions go through their own HRC for approval prior to allowing any of their staff be trained even if it had already received IST agreement and approval from the BMGO providers own HRC?

    The IST, including the individual, should all assist with the development of a BSP, and the IST should work together to make any adjustments as necessary. The restrictions within the BSP should also be documented in the PCISP. There is nothing that prevents another HRC from reviewing; however, if the BSP has team agreement and all the necessary components, then the plan should be implemented immediately.

36. I see that people can have visitors of their choosing at times they choose. What if they have a roommate that isn’t comfortable with the visitor or the time of the visit?

    In a shared living arrangement, all individuals living in the home have the right to visitors of their choosing and at the time of their choosing. If there are disagreements regarding visitors, individuals should be empowered to discuss their concerns and work toward an agreement or creative solution. If no agreement or positive solution can be reached, a discussion may need to occur about the effectiveness of the living arrangement (recognizing that lease obligations may exist). The key is that the individuals involved should be equipped to drive the solution and work toward conflict resolution.

37. How do you handle an individual requiring 2:1 staff as a long-term restriction?

As part of any modification, ongoing data measuring the effectiveness of the modification should be collected. ISTs should work with the individual to determine what staffing level is appropriate. Increased staffing levels are restrictive and should be individualized and follow the requirements of the settings rule to implement, including regular review.

38. Is there any kind of review process for modifications or restrictions of rights for people who do not have Behavior Support Services support, such as HRPs or in the PCISP?

    The IST should formulate a process for modifications of an individual's rights and ensure it is clearly documented in the PCISP. The review should still include data review and should be driven by the individual.

39. How do we gain consent for a modification if the individual is nonverbal or has a lack of understanding?

    All communication should be presented in a way in which the individual understands as much as possible. If the individual is unable to consent, the IST may need to question the implementation of a rights modification or restriction.

40. What if parents implement restrictions for their children due to parenting decisions? How do these differ from modifications of adult rights, if at all?

    Parents, especially parents of minor children, have the right to implement restrictions in their own home. However, if the parent is a paid staff for an adult child, the restriction would have to follow the settings rule and be documented accordingly. Paid staff, parent or not, are not allowed to implement a restriction that has not been discussed, data collected, and the necessity documented according to the settings rule. If there are not staff implementing the restrictions, then it could just be a team discussion to explain to an individual their rights.

41. Do we consider being wheelchair-bound as a restriction to one's privacy?

    An individual who uses a wheelchair has a medical necessity versus a rights restriction. However, depending on the support being provided to that individual, a restriction to the individual's privacy may become an issue. The team should have discussions with the individual to ensure the support provided is not infringing on the individual's rights.

42. We are out of home respite. Our individuals come for short-term visits from our community and from all over Indiana. As a place that people do not live, are we allowed to have no smoking, drugs or alcohol policies in place?

    Out of home respite would be allowed to implement policies such as these as it is a place of business and not an individual's home.

43. Can the individual's informed consent be revoked at any time?

    Yes.

44. What is the point of a restriction or of getting HRC approval if consent is required and if the individual can change their mind at any time? This causes a lot of contention among teams, especially between providers, legal guardians, and case managers.

    HRC approval ensures that the restrictions have met all of the requirements of the HCBS settings rule. It also helps to ensure that all staff implement a restriction in the same manner. Part of the restriction should include data collection and documentation; including if the individual decides to change their mind at a given time. If an individual changes their mind, then the IST can convene and discuss next steps.

45. Should restrictions that are not appropriate for fading due to medical concerns (i.e. dementia) be included in the BSP or the PCISP?

    The HCBS settings rule requires all restrictions, even those that may not be appropriate for fading, to be clearly documented including data collections and frequently reviewed.

46. If a person has a guardian who consents to a restriction, but the person receiving services does not consent, how should we proceed?

    If an individual receives HCBS services, all HCBS rules must be followed regardless of the legal status of the individual. A guardian, as a participant in the HCBS Waiver program is responsible for ensuring compliance with all HCBS rules. Failure to comply with HCBS rules may impact participation in HCBS services. ISTs should educate guardians on the requirements of participation in HCBS services. If the IST needs assistance navigating this then they can reach out to BDS or the Waiver Ombudsman.

47. Can an individual's guardian that owns the home that the individual lives in with no roommate place a camera in the common area? Would this need an HRC or is it allowed because it is a common area (i.e. the living room)?

    This largely depends on the situation. Most likely it is a restriction and would also need to be noted under the privacy section of the PCISP. It is important to obtain the individual's consent as well.

48. If an individual has visitors and one visitor takes the individual out shopping, is it appropriate for the other visitor to stay in the home with staff and other individuals who have not given consent for that person to be there?

    In a shared living arrangement, all individuals living in the home have the right to visitors of their choosing. If there are disagreements regarding visitors, individuals should be empowered to discuss their concerns and work toward an agreement or creative solution. If no agreement or positive solution can be reached, a discussion may need to occur about the effectiveness of the living arrangement (recognizing that lease obligations may exist). The key is that the individuals involved should be equipped to drive the solution and work toward conflict resolution. If you have a specific concern, feel free to email BDS Help at BDS.Help@fssa.in.gov or Kim Cauley at Kim.Cauley@fssa.in.gov.

49. If the Individual has to have Informed consent for the modification or restriction to be in place and has the right to stop it at any time, is it really a restriction or a choice made by the individual?

    HRC approval ensures that the restrictions have met all of the requirements of the HCBS settings rule. It also helps to ensure that all staff implement a restriction in the same manner. Part of the restriction should include data collection and documentation; including if the individual decides to change their mind at a given time. If an individual changes their mind, then the IST can convene and discuss next steps.

50. My experience is that alone time or line of sight is not in the HRC or BSP. Should it be?

    Yes, it should be included in the PCISP and/or BSP and have the required information to support the modification of rights.

51. What if Tammy is new to our services and comes with a "line of sight" restriction. We can't immediately remove the restriction without our own data, can we?

    The IST should meet with the individual as part of the transition process and determine whether any updates need to be made to the PCISP, BSP, etc., including any restrictions currently in place. The team should obtain historical data to inform all parties of whether a restriction is appropriate.

52. In the situation with Tammy, she would have to agree to line of sight, correct?

    Yes.

53. Tammy example- If the restriction is already in place passed by HRC, then the new provider must comply?

    The IST should meet with the individual as part of the transition process and determine whether any updates need to be made to the PCISP, BSP, etc., including any restrictions currently in place.

54. For an individual posing a predatory sexual risk to others, we may not know if lifting the restriction (assisted in the restroom) is safe until we try and possibly assaults another individual. Suggestions on this type of situation?

    HRC approval ensures that the restrictions have met all of the requirements of the HCBS settings rule. It also helps to ensure that all staff implement a restriction in the same manner. Any restrictive measure must be approved by the HRC, be time limited, and regularly reviewed for intended reduction/eventual elimination over time.