

Individually-Based Limitations to the Rules in Community-Based Settings Provider Information Sheet

(Companion to Individually-Based Limitations to the Rules in Provider-Owned, Controlled, or Operated Residential Settings Provider Fact Sheet)

The Centers for Medicare and Medicaid Services (CMS) has issued Home and Community-Based (HCB) setting rules, detailing what elements are in place in order to call a setting home or community-based. The federal rules allow **individually-based limitations** to the specific setting rules in certain circumstances. The below HCBS setting rule requirements are the **only** HCBS requirements to which limitations may be applied. This information sheet addresses what this means for Oregon providers of home and community-based services (HCBS).

The only rule requirements that can potentially be limited on an individual basis in a provider-owned, controlled, or operated residential setting are:

- The individual receiving service has a legally enforceable agreement (e.g., lease, residency agreement, or other form of written agreement) that addresses responsibilities and protections from eviction comparable to the jurisdiction's landlord tenant laws.
- Each individual has **privacy** in their bedroom or living unit:
 - Bedroom or living units have doors lockable by the individual, with only appropriate staff having keys to doors as needed.
- Individuals sharing bedrooms or units have a **choice** of roommates in that setting.
- Individuals have the **freedom** to furnish and decorate bedroom or living unit within the lease or other agreement.
- Individuals have the **freedom** and **support** to **control** their own schedules and activities.

- Individuals have freedom and support to **access** to food at any time.
- Individuals are able to have visitors of their **choice** at any time.

The Home and Community-Based rules support individual rights and encourage personal choice. The rights of all citizens are protected by the Constitution of the United States. No state can remove or limit the rights that are guaranteed by the Constitution. In addition to inherent human and civil rights, recipients of HCBS have administrative program rights. Providers of HCBS are expected to honor and uphold all human, civil, and administrative rights of individuals in their care. Providers are also expected to maintain safe living environments that honor an individual's right to privacy, self-determination, choice, and access to the community.

A primary responsibility of service providers is to ensure an individual's health and safety is supported pursuant to the individual's personal preferences and assessed needs identified in the individual's person-centered service plan. To ensure optimal health and safety, **individually-based limitations** to the Federal rules stated above may be necessary. **Individually-based limitations** will only be considered if the absence of the limitation will adversely compromise the health and safety of the individual or others.

To determine if an **individually-based limitation** is necessary to protect the health and safety of the individual or others, the individual, the person-centered plan coordinator (i.e., case manager), and those chosen to provide support must engage in person-centered dialogue to develop person-centered solutions.

Person-centered planning discussions should include people chosen by the individual including but not limited to a legal representative, family members, friends, person-centered plan coordinators, and providers. The following information is provided to facilitate person-centered discussions to identify if an **individually-based limitation** is necessary and appropriate.

The following describes each rule concept and Oregon's policy regarding limiting the rules for individuals residing in provider-owned, controlled, or operated residential settings.

The individual receiving service has a legally enforceable agreement (e.g., lease, residency agreement, or other form of written agreement) that addresses responsibilities and protections from eviction comparable to the jurisdiction's landlord tenant laws.

All provider-owned, controlled, or operated residential settings in Oregon must ensure that individuals have a legally enforceable landlord/tenant agreement or its equivalent. The Department of Human Services and the Oregon Health Authority have not identified a circumstance in which a limitation in this area would be appropriate. Any proposed limitations will be considered on a case-by-case basis.

Individual protections to privacy in the following areas:

Bedroom or living units have doors lockable by the individual

Individually-based limitations are anticipated to be allowed only in situations where the individual and/or others may be at risk due to emergent health or safety risk. Less restrictive methods such as scheduled monitoring or increased staff access to keys must have been attempted and documented.

An individual may freely choose not to use the lock. If a person chooses not to use the locks on their doors, their right to privacy must still be respected (knocking before opening a door, identifying yourself before opening a door, etc.). Should an individual choose to have their lock disabled or removed that choice must be documented in the person-centered service plan and on file at the residential site for review by the Licensing or Certifying authority. Appropriate staff will have keys, as needed for safety.

Sharing of bedrooms or living units is by individual choice

The individual may choose a shared living situation. However, an individual's preference for a roommate may not be accommodated if doing so will exceed the capacity for occupancy or licensing limits. A person may not move into a setting without being included in the landlord/tenant agreement, residency agreement, or its equivalent to provide protections from eviction or termination of residency.

In situations where the individual is in a shared living situation and decides they no longer wish to share a room with their current roommate, they will be provided the option to move to an available private room or another residential setting. The transition period in which the individual must remain in the current arrangement is considered an **Individually-based limitation** until a move occurs. In cases where there is immediate threat to the safety or health of either individual in the shared situation, the provider must take actions to ensure safety such as increased monitoring or offering a temporary safe location in the current setting.

In a shared bedroom or living unit where one of the roommates has vacated the room, the remaining individual must be included in new roommate selection. Individuals have a choice in who will be their roommate.

Freedom to furnish and decorate

This area should be addressed in the residency agreement, rental/lease agreement, or equivalent, where applicable. Limitations within the residency agreement must not be stricter than the prevalent community standard where there may be typical language regarding restrictions to structural or major changes such as painting, putting holes in walls, or other modifications that may diminish the value of the property. When limitations go beyond the community standards, or decorations or furnishings pose a substantial risk to the individual or others, the limitations must be addressed through the person-centered planning process and documented in the person-centered plan and not solely addressed through the residency agreement or rental lease agreement.

Individual protections to control their own schedules and activities

Individually-based limitations are anticipated to be limited to situations in which there is a risk to the health and safety of the individual and/or others. Less restrictive measures must have been tried and documented before any **individually-based limitation** will be considered.

Individual may **freely chose** to have others manage their schedules for them. This choice must be documented in the person-centered service plan.

Individual protections to have freedom and support to access to food at any time

When choosing a provider owned, controlled, or operated residential setting, the individual is choosing a bundled services package which includes three basic meals and two snacks per day. Providers must make every effort to make sure the food choices offered meet the individual's preferences. Providers must bear in mind the rights of individuals to determine their own compliance with Doctor's orders concerning the provision of special diets. Providers should have similar protocols in place should an individual choose to not adhere to a specialized diet as they do for the refusal of medication or other prescribed therapies.

Individually-based limitations are anticipated to be limited to situations in which there is a risk to the health and safety of the individual and/or others, such as not properly storing food properly leading to insect or rodent infestations or unsafe sanitary conditions. Less restrictive measures such as tools for ease of food storage, staff supported access, retrieval or storage by staff must be tried and have failed before any **individually-based limitation** will be considered.

Individual protections to have visitors at any time

Providers have the challenging and important responsibility of protecting the rights of individuals while taking steps adequate to mitigate substantial risks to the safety and security of the individuals in their setting. Reasonable standards can be implemented by providers to mitigate safety risks associated with visitors, such as visitor check-in procedures. Visitors must be able to adhere to setting standards in place for the protection of others, such as not smoking within the residence. Visitors engaging in behaviors that are harmful to others may be asked to leave the residence. Visits are generally defined as less than 24 hours, though providers may provide exceptions to this definition for specific situations such as out of town guests or hospice situations. Providers are not obligated to provide food or amenities for visitors.

Individuals may **freely choose** who to visit with and decline visits if desired.

Individually-based limitations are anticipated to be limited to situations in which there is a risk to the health and safety of the individual and/or others. Less restrictive methods such as increasing visitor expectations, providing visitor entry to individual's living unit but not the facility, staff escorted visits from setting entrance to an individual's bedroom or living unit are examples of strategies that must have been tried and failed before **individually-based limitations** will be considered. Limitations may be specific to certain visitors while an individual retains the right to have other visitors at any time.

General Discussion

A behavior support consultation and resulting behavior support plan may be available for some programs. The goal of the behavior support plan is to further assess the need for the individually-based limitation and to assist with the identification of less restrictive means of addressing the identified risk. If available and appropriate, this step may assist with problem solving and avoid the need for a more restrictive limitation. A behavior support consultation and the resulting documentation will contribute valuable information regarding the use of less restrictive alternatives and should be considered, when available, before proposing a more restrictive limitation.

When the individual chooses to have a representative or one is appointed by the court, the **individually-based limitations** agreed to by that representative are considered as if made by the individual. If the individual is not required by the court to have a guardian or other representative they may choose not to implement any **individually-based limitation** agreed to by the representative. Limitations cannot be implemented without the individual's informed consent.

Freely chosen means without coercion or undue influence.

Person-Centered Service Plan Coordinators will clearly document through the person-centered service planning process each of the areas where **individually-based limitations** are used.

Frequency of limitations review and monitoring

No limitations/Freely chosen alternatives will be reviewed annually or sooner. If the individual or member of the person-centered service plan team request a review, or if the individual's health or safety needs have changed suggesting that a need for a limitation may be indicated, then a review will occur.

Individually-based limitations will be reviewed semi-annually or sooner if the individual or member of the care team requests or agrees to an earlier review. Additionally, if the individual's health or safety needs have changed suggesting that a need for a new limitation or removal of a limitation may be indicated, then a review will occur.

Documentation

The following elements are required to be documented for any individually-based limitation to the rules. It is the Person-Centered Service Plan Coordinators responsibility to gather and record the information listed below. It is the provider's responsibility to have a copy of the **individually-based limitation** on file, seek solutions or less restrictive alternatives to the **individually-based limitations**, and collect and report data to the Person-Centered Service Plan Coordinator on the ongoing effectiveness of the **individually-based limitation**.

The following must be documented in the person-centered service plan:

- Identify a specific and individualized need;
- Document the positive interventions and supports used prior to any **individually-based limitation**;
- Document less intrusive methods of meeting the need that have been tried but did not work;
- Include a clear description of the rule change that is directly proportionate to the specific assessed need;
- Include a regular collection and review of data to measure the ongoing effectiveness of the **individually-based limitation**;
- Include established time limits for periodic reviews to determine if the **individually-based limitation** is still necessary or can be terminated;
- Include informed consent of the individual; and
- Include an assurance that the interventions and supports will cause no harm to the individual or others.