

HCBS Settings Final Rule Best Practices Frequently Asked Questions

The following information addresses the Question Identification (QIDs) from Remediation Work Plans (RWP) that providers frequently ask questions. Each “Example from Accepted RWP” has been taken directly from a real setting’s approved RWP and serves as a guide of what you may be able to implement to bring your setting into compliance.

1. Supporting individuals to be engaged in their community (QID 8, 9, and 10)

For this federal requirement, the expectation is that settings support individuals in engaging in their community, based on their interests and preferences (QID 8), and in doing the things they want either by themselves (QID 9) or with housemates/roommates (QID 10). Individuals’ interests and preferences should guide what activities are planned and how that information is shared with individuals. When informational flyers or activity calendars are used, they should be specific to each setting and reflect an individual’s unique interests and preferences.

Example from Accepted RWP

During admission and annual planning meetings, the provider will talk with individuals about their preferences as well as hobbies, favorite activities, favorite restaurants, and activities or events they might like to try in their community. This information is documented in their person-centered plan. During monthly meetings, individuals and staff discuss different activities for the upcoming month(s). Staff and individuals work together to make the necessary arrangements for the activities. Individuals who did not participate in the meetings will be informed of the activities during conversations with staff and individuals at other times. An informational flyer about group activities for the month will be distributed to individuals and displayed in the dining room. Individual activities are also planned by the individual and staff. The activities director is responsible for the implementation of this plan, with a start date of 1/24/2022 and an expected completion date of 4/1/2022.

2. Video monitoring (QID 13, 26, and 49)

The expectation is that any practices that limit, or potentially limit, an individual’s free access to the community (QID 13) or around their home (QID 26 and 49) are used cautiously and follow specific guidelines to protect individual rights.

Example from Accepted RWP

The provider has written a policy for the use of video monitoring, which is limited to shared areas — hallway, kitchen, and foyer in the home and outside near the doors. There is no monitoring allowed in bathrooms or bedrooms. The setting's policy on video monitoring is included as part of the admission agreement and reviewed annually at the person-centered plan meeting to gain informed consent. The policy details:

- Where the video cameras without audio are in the home and outside.
- That the footage is viewed only by the administrative staff when there is an unusual incident, such as an allegation of mistreatment or accident.
- That requests from individuals, families, or others to view the recording would be evaluated and granted by the administration if warranted or ordered by the court.
- That recordings are saved for seven (7) days unless needed to evaluate an unusual incident.

Signs are posted by all doors so that anyone entering the home is aware of the use of video cameras. The administrator is the person responsible for ensuring this policy takes effect, and this will be completed by 3/15/2022.

3. Doors are locked and individuals must notify staff to let them into their home (QID 13, 26, and 49)

The expectation is that individuals would have a key, fob, or code to enter, so they do not need to rely on staff to let them into their home (QID 13, 26, and 49).

Example from Accepted RWP

The provider addressed this issue by saying all individuals who wanted a key to their home would be given a key. The provider will document in each individual's ISP whether they choose to have a key or not. At admission, and at least annually, staff will discuss this topic with the individual to determine if they want to change their mind about having or not having a key. Staff will remind individuals that they can change their minds about having/not having a key at any time. The provider will continue to be available to open the door when locked to let individuals in if they chose not to have a key or did not have their key with them. If an individual does not keep or use the key, the person-centered team will assess to determine what support might help the person keep or use the key. If the team determines that the individual should not have a key, this will be documented in the ISP and revisited at annual meetings — or more often, if requested or warranted. The administrator will inform staff, families, and individuals of this change by 4/1/2022, and the administrator or staff under their direction will talk to

individuals about whether they want a key or not. The person-centered team will discuss it at meetings in the future.

Example from Accepted RWP for a licensed secure setting for individuals with memory care supports

The provider explained that they will install a keypad and give the keycode to individuals who want to have the keycode unless there is an assessed need for that individual that they cannot safely have the keycode. At admission and regularly after that, the person-centered team will assess to determine if the individual can use the keycode and identify risks associated with the individual having the keycode. If the individual is unable to use the key code, the person-centered team will develop strategies to help the individual use the keycode. If the person-centered team identifies risks associated with the individual having the keycode, the person-centered team will develop strategies to address the risks, which might lead to a modification. In the person-centered plan, the provider will document a) the individual's choice to have the keycode or not; b) the result of the person-centered team's assessment of supports and risks; c) any supports to help the individual use the keycode; and d) as warranted any modifications following the requirements for modifications. If an individual does not want the keycode or cannot safely use the keycode, staff will be available to assist the individual by opening the door for them. The administrator is responsible for implementation, including communicating this change to individuals and staff. The keypad will be installed by 5/1/2022 and implementation of the person-centered assessment for all individuals, whether new or currently living at this home will begin 5/30/2022 with the goal of completing all assessments for individuals currently living in this home by 10/31/2022.

4. Individuals do not have privacy when given meds (QID 20 and 30)

The expectation is that individuals' right to confidentiality, through the Health Insurance Portability and Accountability Act (HIPAA), is protected so others do not know what medications they take or if, when, or why they take medications.

Example from Accepted RWP

The provider ensures confidentiality by changing their practice of giving medications in the dining room during meals or snacks. Everyone is offered the option to take their medications in private. For example, medication is given in their bedroom in private; individuals go to the specific place when they take medications, or individuals take their medications in the dining room/with snacks with as much privacy as possible. When an individual chooses where they want to take their medications, their response is recorded in the ISP, and their choice is reviewed as needed and at least annually. Staff is trained on HIPAA (and what that means pertaining to when medications are given) and trained

on information sharing and documentation upon hire, as needed, and at least annually. This was completed on January 31, 2022, under the guidance and direction of the nurse.

5. Individuals have privacy during personal care or when using the bathroom or when assisted with personal care in their shared bedroom (QID 21)

The expectation is that individuals have privacy, especially when they are assisted with personal care or using the bathroom or dressing.

Example from Accepted RWP

The provider asserted that they will be installing privacy locks on bathrooms in shared areas. Each individual's person-centered team is completing an assessment to determine if it is safe to have privacy locks installed on the bathroom connected to the individual's room and if it is safe to have privacy or keyed locks on bedroom doors. Based on the outcome of the assessment, individuals will be offered a privacy lock for their bathroom and either a privacy lock or keyed lock for their bedroom door. If individuals are unable to be safely supported with a privacy/keyed lock, it will be documented in the ISP. If an individual can be safely supported with a privacy and/or keyed lock on their doors, the lock(s) will be installed, and, if applicable, the individual will be given a key. The door will be able to be opened with a passkey in the event of an emergency or if the individual misplaces or loses their key. The outcome of the assessment as well as an individual's choice to have a privacy or keyed lock will be documented in the ISP. For everyone currently living in the home, the assessment will be completed by 4/15/22. The admission agreement will be updated to include these changes for everyone who moves in after 3/1/2022. This practice will be reviewed with individuals during admission, annually after that, or if there is a change in the individual's condition. The administrator will review the importance of privacy and the changes in the practice of locking bathroom and bedroom doors with staff at monthly meetings and as needed.

Example from Accepted RWP

The provider developed a policy, "Right to Privacy" that is reviewed at admission, when there is a change in roommates, as needed, and at least annually. The policy suggests options to create/ensure privacy in shared rooms by using privacy curtains, decorative screens, bookcases, or shelving units to create a divider or arranging furniture to create privacy. Staff regularly participate in training about individuals' rights and the administrator will conduct training about privacy, including the staff's role in supporting individuals to have privacy. During training within the next month, the administrator will explain that during personal care and other times, the staff will talk with individuals

about their right to privacy asking if they feel comfortable with their privacy and suggesting other things staff and the individual could do to promote privacy. For example, they might ask the roommate to step out of their room or the individual and staff might go into the locked bathroom. After staff has been trained on the policy, the administrator will send notices to individuals and their families about the change in policy and scheduling meetings with individuals and their families to discuss the policy and options for privacy. The discussion will be documented in the ISP identifying actions needed and timelines. The goal is to identify all actions requested by individuals by June 30, 2022. The administrator will discuss the privacy policy and options with any individuals who participate in the admissions process after April 1, 2022.

6. Individuals have a secure place to store their belongings (QID 22)

The expectation is that individuals can have the items with them that they want and that their personal belongings are secure.

Example from Accepted RWP

The provider changed the nightstands in each bedroom to a storage cabinet with a lock. Each individual was given a key to their personal cabinet. Individuals are encouraged to store anything valuable, such as their wallet or tablet, in the cabinet through conversations with staff. The administrator also met with individuals to explain the use of the cabinet, telling individuals that they could keep anything they wanted in the cabinet and if they had left belongings with their family that they wanted to have at the setting, they could keep those things safely in the cabinet. The administrator added the locking cabinet with a key to the checklist for individuals going through the admission process. The setting no longer discourages individuals from bringing their valuables. The administrator provided training to all staff at the March 2022 staff meeting when these changes were put into place. The training focused on individuals' rights and supporting people to use their cabinets.

7. Individuals are not able to have visitors when they choose (QID 47)

The expectation is that individuals can have visitors whenever they choose and for the length of time they choose, including overnight.

The HCBS Settings Rule promotes autonomy. The individual has choice and control. Policies and procedures may be necessary so that individuals know that even though they have a friend or family member sleepover, the setting is not responsible for providing a room or bed for the individual's guest. The policy and procedure might describe the expectation that an individual's guest(s) treat everyone with courtesy and respect. Although individuals do not need permission to have a guest, it would be

courteous to introduce their visitor to the people they live with and the staff who are working. As with most of the requirements in the HCBS Settings Rule, following the procedure for modifications, the requirement can be modified. That might be warranted based on an assessed need for the individual.

Based on guidance from DHCS and the Health and Safety Code, individuals' guests who are spouses, relatives, significant others, or close friends are exempt from criminal background checks. (HSC 1569.17). Overnight guests are not residents unless they are paying for room and board AND have a signed lease agreement.

Example from Accepted RWP

The provider revised their visiting policy, house rules, and admission agreement to indicate that individuals can have visitors whenever they choose, including overnight. The policy, house rules, and admission agreements note that they would like visitors to sign in and out, so they know who is in the home. However, individuals and visitors may choose not to sign in/out, and if an individual shares a bedroom with another individual, the individual is encouraged to talk with their roommate when they have an overnight visitor. The administrator completed these revisions by 2/1/2022. The administrator completed training on the changes and individual's rights to have visitors when they choose with staff, including the staff responsible for reviewing the changes in the policy, house rules, and admission agreement with individuals living in the home by 3/1/2022. The administrator will send written notification to the individuals and their family members about the changes by 3/1/2022. The staff responsible are charged with reviewing with everyone the changes in the policy, rules, and agreement by 4/1/2022.

8. Access to kitchen (QID 26 and 49)

The expectation is that this is the individual's home. People can freely move about their home, including the kitchen, without unnecessary restrictions.

Example from Accepted RWP

Providers have addressed this differently. The following responses are acceptable.

- Some providers do not limit access to the kitchen or the appliances. Individuals can go into the kitchen to get a drink or get something from the refrigerator or pantry. Depending on assessed needs and preferences, some individuals independently use the microwave, oven, stovetop, coffee pot, and/or other appliances. Other individuals are supervised or assisted, as documented in their ISPs. Based on varying factors, some items, such as toxic cleaning supplies, might be secured in a locked cabinet, but that does not keep individuals from going into the kitchen and using appliances or getting food or drink.

- Some providers have created a kitchenette or kitchen area that has a stocked refrigerator, microwave, range, coffee maker, toaster, or other appliances the individuals might use. Depending on assessed needs and preferences, some individuals might independently use the microwave, oven, stovetop, coffee pot, and/or other appliances, as documented in their ISP. Other individuals are supervised or assisted.
- Some individuals have kitchenettes in their rooms, so they can store food in the pantry or refrigerator and/or cook things in the oven, microwave, or stovetop. Depending on assessed needs and preferences, some individuals independently use the microwave, oven, stovetop, coffee pot, and/or other appliances, as documented in the ISP. Other individuals are supervised or assisted.

For all providers, any limitations on **full access** to the home (including supervision or assistance) are based on following the requirements for modifications. Individuals' ISPs must include information that:

1. Identifies a specific and individualized need.
2. Documents positive interventions and supports used prior to modifications.
3. Documents less intrusive methods of meeting the need that had been tried and did not work.
4. Include a clear description of what is being modified, directly proportionate to the assessed need.
5. Include data collection to measure the effectiveness of the modification.
6. Include time limits for reviews.
7. Include informed consent.
8. Include an assurance that interventions and support will cause no harm.