

The Adult 1915(i) DMHA SET Team's Responses to Questions Submitted at the November 18, 2016 Training

Q: What happens if the person refuses to sign the modification?

A provider may not initiate modifications without the informed consent of the member, as evidenced by the member's signature on the person-centered treatment plan. Per CMS:

“An individual must provide informed consent prior to a necessary modification of conditions related to home and community-based settings being implemented, and providers cannot modify these conditions without such consent... If an individual continues to reside in the setting without the necessary modification in place, the state is still responsible for assuring the individual's health and welfare and implementation of services consistent with the person-centered plan. The state would therefore need to determine if it could assure the health and welfare of the individual if he or she continues to reside in the setting without the modification...”

Essentially, if a resident refuses to consent to a modification of a “POCO 5” requirement, **it may not be implemented**. The provider is still responsible for ensuring the health and safety of the member, so the agency may need to re-assess whether it is clinically appropriate and indicated for the resident to remain in the setting without the modification, or whether the member would be better served in a different residential setting (one that is more or less restrictive, depending on the member's needs). The provider could then facilitate the resident's move to a more appropriate residential setting. Under no circumstances may a member be evicted simply for not agreeing to a modification.

Q: Can we limit children/minors from visiting the house?

No. The HCBS Final Rule states that residents in POCO residential settings may have visitors of their own choosing at any time. Agencies may still implement requirements for the conduct of visitors in their resident's agreement/lease, which extends to minor visitors. Any restriction on minors visiting the residence (just because they are minors) must be documented in the member's IICP as a modification to a "POCO 5" requirement, and be based on the individual's clinical needs.

Q: Our SGL has a two-year limit to stay at the SGL. If someone wanted to stay longer than that time, would we be allowed to have a limit?

It depends on the terms of the lease/residency agreement, and whether the resident can still benefit from the treatment structure/milieu at the setting. Many leases contain language

permitting month-to-month occupancy at a dwelling after the expiration of the initial lease term, while others require a new lease to be executed if the resident chooses to stay. Another consideration is whether the resident still clinically requires and benefits from the structure provided at the setting.

Q: *Can you ban a guest that has bedbugs?*

DMHA believes this would be appropriate, based on the provider's responsibility to ensure the health needs of the entire residence. Language could be included in the lease/residency agreement stating that visitors with bedbugs, communicable diseases, or other health and safety risks are not be allowed to visit.

Q: *Can there be a limit to the number of guests a resident can have? For example, a resident has 10 homeless friends staying overnight.*

CMS has not given specific guidance about the number of guests a resident may have at any one time. DMHA believes this issue is most appropriately addressed in the lease/residency agreement, under guidelines for conduct of visitors and responsibilities of residents having guests.

Q: *Do legal restrictions override CMS requirements? Does this need to be documented as a modification? For example, a resident's guest has an order of protection against another resident.*

In the absence of specific guidance from CMS, DMHA recommends that your agency defer to a court order which may be in place for a particular circumstance. DMHA also strongly recommends that your agency consult with your legal counsel.

Q: *For settings deemed non-compliant, if a client has a transition plan that is 9 months long and their BPHC/AMHH runs out, will the renewal application be approved? This will allow coverage to continue during the transition.*

A member living in a non-compliant setting will continue to be eligible for AMHH/BPHC until the end of their Member Transition Plan. Please refer to the Indiana HCBS Statewide Transition Plan for specifics on the Member Transition Plan.

Q: If a location is determined non-compliant and a client chooses to remain there, this negates the need for a transition period. Is the BPHC/AMHH terminated immediately or does it end at the expiration date of the current approval period?

Two points. First: the agency MUST complete and submit a Member Transition Plan for any BPHC/AMHH member living at a setting which has been determined non-compliant. The decision not to move does not negate the need for a transition period or plan. Based on the scenario noted, the member would not be transitioning to a new setting, however they would be transitioning off of HCBS services and into something else. The member transition plan would address the transition off of HCBS services. Please refer to the Indiana HCBS Statewide Transition Plan for specifics on the Member Transition Plan. Second: If a member transition plan indicates that the member is going to stay in the non-eligible setting, then the current package would be terminated at the end of the member transition plan (transitioning to non-HCBS service), with no renewals. If the Transition Plan indicated that the member was moving to a new eligible setting, then the Plan could allow for a renewal in order to aid the transition. However the member must move to a HCBS compliant setting within the transition period, or eligibility will end at the end of the transition period and no further renewals will be approved while the member is living in a non-compliant setting.

Q: If a client has a legal guardian, who needs to sign or initial the residential "pick list" or documentation that options have been explained, and/or that the residential handbook has been received?

The legal guardian's signature is the one which must be obtained, as with all matters pertaining to guardianship of another person.