

Finding “Right” in HCBS Services

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Why?

- Know where rights and due process fall within the HCBS regulations.
- Develop an awareness of how rights must be protected and measured against risk.
- Develop an awareness of the process needed to implement a rights restriction.
- Develop an understanding of the role that a guardian has when implementing rights restrictions.

Iowa Medicaid Supports Best Practices

(1) Consumer Rights!

Although these specific rights are only required for the ID and BI Waivers, Iowa Medicaid Enterprise (IME) supports best practice across all waivers.

Rights are protected for all citizens!

Why Are Member Rights Important?

- **Organizational standards (Outcome 1).** Organizational outcome-based standards for home and community-based services intellectual disability providers are as follows:
 - a. The organization demonstrates the provision and oversight of high-quality supports and services to consumers.
 - b. The organization demonstrates a defined mission commensurate with consumers' needs, desires, and abilities.
 - d. The organization has qualified staff commensurate with the needs of the consumers they serve. These staff demonstrate competency in performing duties and in all interactions with clients.
 - e. The organization provides needed training and supports to its staff. This training includes at a minimum:

****Requirements for the ID Waiver 77.37(1) and BI Waiver 77.39(1)e**

What are Members' Rights?

- **77.37(2) Rights and Dignity. Outcome-based standards for rights and dignity are as follows:**
 - (Outcome 2) Consumers are valued.
 - (Outcome 3) Consumers live in positive environments.
 - (Outcome 4) Consumers work in positive environments.
 - (Outcome 5) Consumers exercise their rights and responsibilities.
 - (Outcome 6) Consumers have privacy.
 - (Outcome 7) When there is a need, consumers have support to exercise and safeguard their rights.
 - (Outcome 8) Consumers decide which personal information is shared and with whom.
 - (Outcome 9) Consumers make informed choices about where they work.
 - (Outcome 10) Consumers make informed choices on how they spend their free time.

What are Members' Rights...continued

- (Outcome 11) Consumers make informed choices about where and with whom they live.
- (Outcome 12) Consumers choose their daily routine.
- (Outcome 13) Consumers are a part of community life and perform varied social roles.
- (Outcome 14) Consumers have a social network and varied relationships.
- (Outcome 15) Consumers develop and accomplish personal goals.
- (Outcome 16) Management of consumers' money is addressed on an individualized basis.
- (Outcome 17) Consumers maintain good health.
- (Outcome 18) The consumer's living environment is reasonably safe in the consumer's home and community.
- (Outcome 19) The consumer's desire for intimacy is respected and supported.
- (Outcome 20) Consumers have an impact on the services they receive.

These Sound Familiar!

The previous slides directly relate to the CMS settings standards and the person's experience of their environment.

They also encompass some of the Personal Outcomes Measures that are being collected

Many are also referenced in your National Accreditation Processes

In Other Words...

- Members should have the **same** choices in their lives as others do.
- Members have the **same** rights as others, and those rights should only be limited by due process.
- Members have the **right** to make mistakes and learn from them.



The Big **BUT**...

- The opportunity to make mistakes **must** be balanced against how much understanding of the consequences or degree of harm that may come to Members by making a poor choice.

**This comes back to rest with the
Service Provider!**



Informed Choice

“I’ll take what’s behind door
Number 2 Monte!”



Knowledge Is Power



What does it mean to have real power?

Real Choice

- Choice involves **knowledge**.
- Choice includes **real**, attainable options.
- Choice must take into account the person's **preferences** or **values**.
- Choice must balance between **responsibility** and **risk**.



Informed Choice

Knowledge is Power!

Identify what experience the person has making

MEANINGFUL

choices and build on those in their plan.



Informed Choice

Knowledge is Power!

- Develop a plan that includes the **entire** treatment team – including the guardian if there is one in place.
- Explain why some choices are not possible and help the member understand why they are not available.



Before Restrictions, Ask:

- Is this a knee jerk reaction at an emotional time?
- Is it for the convenience of staff?

(If the answer is yes to either of the above questions- DON'T RESTRICT, BE CREATIVE)



Making Decisions on Restrictions

- Ask Questions:
 - What is the restriction?
 - Why is the restriction needed?
 - What has been done to prevent the restriction?
 - How will it benefit the consumer?
- Team Process:
 - Is the team in agreement? How is this documented?
 - How will staff implement the restriction?
 - Where will it be implemented?
 - What will the consumer do when you implement the restriction?
 - If the consumer has problems when the restriction is implemented, what should staff do?



RESTRICTIONS

- Restriction: Something (as a law or a rule) that restricts: the state of being restricted or limited
- Examples of Restrictions or Limitations
- Why do we restrict rights?
 - Health
 - Safety
 - Control



Ramifications of Restrictions

- Loss of control
- Loss of confidence
- Loss of trust in the relationship
- Hopelessness/ helplessness



What Restrictions mean from Consumer's point of view:

- Lack of power
- Hinders choice
- Feels less important than others
- Reinforces “differences”
- Stunts emotional growth
- Impedes creativity



Making Decisions on Restrictions

- Prioritizing
 - Based on individual interest
- Identify skill training
 - What needs to happen before the restriction can be reduced or eliminated?
 - Will training be in the plan? If not, why?
 - How will the restriction be reduced or eliminated?
 - How often will it be reviewed?
 - How will progress be shared with the team?



Evaluating The Risk

Learn to evaluate accurately the sources of concern and how to mediate them:

- Threat to the well-being of the individual or to the professional doctrine of “best interest?”
- Threat to the well-being of the individual or the provider’s image?
- Threat to the well-being of the individual or fear of not allowing the person to make a choice we would not make?

Restrictions and HCBS Settings

HCBS Settings indicates specific circumstances where factors limiting the required conditions of provider-owned/controlled settings must be accompanied by justification, assessed need and service plan revision.

<https://www.medicaid.gov/medicaid-chip-program-information/by-topics/long-term-services-and-supports/home-and-community-based-services/downloads/requirements-for-home-and-community-settings.pdf>

High Risk = High Responsibility

PROVIDERS CANNOT LET
“IT WAS THE MEMBER’S CHOICE”
BE AN EXCUSE FOR NOT
ATTEMPTING TO ENSURE SAFETY.



Choices That Involve High Risk

- Examples of individual choices which may involve **high risk** include:
 - An individual who becomes aggressive to other residents and staff when angry.
 - An individual who smokes in his/her own apartment has tried to put cigarettes out on articles other than an ashtray (ie: nightstand, book, table, etc..)
 - An individual may go out and get drunk and then walk back to their home.

Managing High Risk

- When there is a high probability choice will result in harm to an individual and/or others, an **obligation** exists to:
 - Be pro-active in identifying the cause for concern
 - Provide the individual with information about the possible consequences of his/her choice
 - Negotiate an agreement with the individual that will minimize the possible risk while still respecting the person's preference
 - Document the process of negotiation and, if no agreement can be reached, the lack of agreement and the decisions of the parties involved.

Managing High Risk...continued

- Managed Risk Agreements could be negotiated with the individual and/or designated agent(s). The Interdisciplinary team, including the guardian, should discuss the need for this. If this route is chosen, the agreement should address the following items **in writing**.
 - The cause for concern.
 - The probable consequences of the choice.
 - What the individual wants.
 - Possible alternatives to the individual's current preference/action.
- The final agreement should be reviewed and agreed on by the team

Managing High Risk...continued

- If the action that the member is taking is very risky, and there is likelihood of imminent harm or danger, the provider must act to protect the member.
- You may have to have the member Court ordered or committed to ensure his/her safety.
- Include the member's guardian in this process.

Due Process & Rights Restrictions

- Due process is “an established course for ...proceedings or activities designed to safeguard the legal rights of an individual.”
- Due process allows the member input + the input of interdisciplinary team on agreement to a restriction.
- Due process occurs **prior** to the implementation of restrictions.

Due Process & Rights Restrictions...continued

- Due process is a **right** of all members, not a possibility that could happen.
- It is a requirement for:
 - Hab 77.25 (4)
 - ID 77.37(1)e
 - BI 77.39(1)e



When Rights Are Limited...77.25(4)

- 77.25(4) Restraint, restriction, and behavioral intervention. The provider shall have in place a system for the review, approval, and implementation of ethical, safe, humane, and efficient behavioral intervention procedures. All members receiving home and community-based habilitation services shall be afforded the protections imposed by these rules when any restraint, restriction, or behavioral intervention is implemented.
- a. The system shall include procedures to inform the member and the member's legal guardian of the restraint, restriction, and behavioral intervention policy and procedures at the time of service approval and as changes occur.

When Rights Are Limited...77.25(4)

- b. Restraint, restriction, and behavioral intervention shall be used only for reducing or eliminating maladaptive target behaviors that are identified in the member's restraint, restriction, or behavioral intervention program.
- c. Restraint, restriction, and behavioral intervention procedures shall be designed and implemented only for the benefit of the member and shall never be used as punishment, for the convenience of the staff, or as a substitute for a non-aversive program.

When Rights Are Limited...77.25(4)

- d. Restraint, restriction, and behavioral intervention programs shall be time-limited and shall be reviewed at least quarterly.
 - Must put in plan a procedure for helping the person learn the needed skill.
 - Must have documentation that you are working on the needed skill.
 - Must review this quarterly as part of your QA.

Common Restrictions

- Guardianship
- Conservatorship
- Representative Payeeship
- Medication Management

But the case manager plan doesn't match....

Was the restriction agreed upon at the IDT meeting?

Did the case manager just forget to add/delete something?

Do you have the IDT decisions documented?

Communicate with the case manager.

Document. Ask for plan revision. Document.

Is Med Administration a Restriction?

- Yes
- Remember: locking medications is also a restriction. It is limiting access

Is it a restriction to receive daily services without any approved alone time?

- This depends. Daily services indicate a level of support. This and of itself is not necessarily restrictive.
- If the person feels it is restrictive? YES
- If the person doesn't necessarily care one way or another? NO

If I am an employment provider, do I need to include restrictions relating to the person's home in my service plan?

- Many plans include a comprehensive list of restrictions that can be seen by all providers.

But the Guardian says....

- Guardianships are the **most** restrictive form of substitute decision-making.
- Guardians are an essential member of the person's decision-making team.
- Guardians come in all shapes and sizes!
 - Always have a copy of the guardianship papers on file so you know the scope of the decision-making.

When A Court Order Is **Required**

- Moving the member to a **more** restrictive setting.
- Major elective surgery or non-emergency major medical procedure.
- Withholding or withdrawal of life support.



Office of Substitute Decision Maker

Training Resource

- Website should be online soon
- Upcoming webinar opportunities

–April 21, 2016, 10AM:

<https://attendee.gotowebinar.com/register/5208798168293364226>

Some Examples To Work Through

Discussion Questions

Include Iowa law changes

- A guardian who lets their ward engage in dangerous behavior
- A member who has an STD and insists on unprotected sex
- Guardian says no dating—ever
- Guardian wants their ward to dress a certain way
- Member becomes very upset when other housemates have any visitors
- Member chooses to only eat fast food and is very obese, but does not have obvious health related concerns

Scope of Service

HCBS Services are provided based on assessed need and on the person-centered service plan. It is important you have a thorough understanding of the scope of the service you are providing.

This tells you:

- ✓ What services you can provide.
- ✓ Where you can provide the service.
- ✓ What services are not part of the service you are providing.

Scope of Service

These are the codes that list the scope of service for each Habilitation and Waiver service:

- IAC 78.27 – Habilitation Services
- IAC 78.41 – ID Waiver
- IAC 78.43 – BI Waiver
- IAC 78.52 – CMH Waiver
- IAC 78.37 – Elderly Waiver
- IAC 78.34 - Health and Disability Waiver
- IAC 78.38 - AIDS/HIV
- IAC 78.46 - Physical Disability

Scope of Service

The MCOs manuals provide you with their Definition of Scope of Services too. It is important to understand their definitions as well.



Your Quality Process

Self Assessment Says:

All rights restrictions must be time limited, contain member's informed consent, supported by a specific assessed need and documented in the person-centered service plan

The provider's service plan includes documentation of any rights restrictions, why there is a need for the restriction and a plan to restore those rights or a reason why a plan is not necessary or appropriate

At a minimum, Service documentation shall include:

Documentation supports member rights restrictions, restraints, and behavior intervention plans are implemented appropriately as identified in the member's service plan

Your Quality Process

Are documentation reviewers trained on each rights restrictions?

What is the process for them to follow should they notice a staff implements a rights restriction without due process?

Summary

Know the rules and expectations

Document your interventions

Allow Due Process

Review progress toward removing restriction

Evaluate the need for continuing

Resources

Office of Substitute Decision Making

OSDM Webinar: Substitute Decision Making

OSDM Webinar: Guardianship and Conservatorship

Revisiting Choices – Parts I & II

By: Michael Small

<http://www.allenshea.com/choice.html>

Substitute Decision Making: The Legal Perspective

<http://www.uiowa.edu/~law-nhlp/>

Resources

5 Star Quality
Community Resource Alliance
cra@aol.com

Disability Rights Iowa
<http://disabilityrightsiowa.org>
Toll Free: (800) 779-2502
Email: info@driowa.org

Resources

Ombudsman Office

<https://www.iowaaging.gov/long-term-care-ombudsman>

Legal Aid Services of Iowa

<http://www.iowalegalaid.org>

Resources - Guardianship

IDD Council:

http://iddcouncil.idaction.org/documents/cms/docs/Publications/Guardianship_3-15-16.pdf

OSDM Webinar Recordings:

http://www.iowaproviders.org/trainings/technical_assistance.html

