

BHD Bulletin

DATE: June 4, 2015

TO: All Waiver Providers

FROM: Jamie Kennedy, CPRT Unit Manager, Behavioral Health Division

SUBJECT: Clarification on Rights Restrictions in the Plan of Care

REF #: JK-2015-002

The Behavioral Health Division recently held case manager trainings in which we educated case managers regarding how rights restrictions must be covered in the plan of care in accordance with our new federal regulations for home and community based (HCB) services. The proposed revisions to Chapter 45 of Wyoming Medicaid Rules reflect the new federal regulations currently in place. However, the timing of the new federal rules and the promulgation of the revised Wyoming rules means that we are in a transition period between what is now expected and what is currently in practice. This bulletin serves to clarify how Division staff will address concerns with rights restrictions during this period of transition.

In the Waiver transition plans for the HCB Setting rules, the Division told the Center for Medicare and Medicaid Services (CMS) that rights restrictions and the documentation of choice in individualized plans of care would be updated by March 2016 to meet the new federal regulations. Between now and next March, the Division, case managers, providers, participants, guardians, and other team members must revisit the way in which rights restrictions are addressed and documented in the plan of care.

Here are some frequently answered questions regarding rights restrictions:

What changed regarding rights restrictions in the new federal rules?

The rights of participants have not changed as much as they have received additional clarity in federal regulations, such as the right to access food, have visitors, and a right to a lockable entrance to one's bedroom and home. All participants on the waiver have rights that must be honored, regardless of age or guardianship.

Can rights still be restricted?

Yes, rights may still be restricted in some instances. The new federal rules address specific criteria to follow when a participant may have a need for a right to be restricted. The criteria includes that the participant and their IPC team must make decisions based on that person's assessed need for a restriction, and not base a decision solely on a diagnosis, medical condition or a possible behavior that happens on occasion. Health and safety concerns addressed by a restriction must not be based on general fears or concerns because of the person's disability or be based on provider convenience

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because of other people served in the home. The new federal rules specify that any modification or restriction of a right must meet the following requirements and be documented in the plan of care:

- 1) Identify the specific and individualized assessed need.
- 2) Document the positive interventions and supports used prior to any modifications to the person-centered service plan.
- 3) Document less intrusive methods of meeting the need that have been tried but did not work.
- 4) Include a clear description of the condition that is directly proportionate to the specific assessed need.
- 5) Include regular collection and review of data to measure the ongoing effectiveness of the modification.
- 6) Include established time limits for periodic reviews to determine if the modification is still necessary or can be terminated.
- 7) Include the informed consent of the individual.
- 8) Include an assurance that interventions and supports will cause no harm.

Will we have to revisit the rights that are restricted on a current plan of care, even if they have been approved in the past?

Yes. By February 28, 2016 all plans of care must be updated to document any rights restrictions according to the new federal standards. The team must look at why a restriction is in place, determine what other strategies have been tried and if there others that could be tried so the restriction can be lifted or become less restrictive. Participants should be allowed to take risks, make choices, and have support and training so that the risks are lessened and the opportunities for exercising their rights and freedoms are respected. The legally appointed guardian and providers should not impose their own value system on the participant. The team should help the participant develop a plan that eliminates unnecessary restrictions and barriers that will keep the participant from achieving the vision they have for their life. The new federal rules are about ensuring that HCB services are not imposing a restricted, isolated, regimented, institutional lifestyle on a person simply because they are receiving Medicaid services or they have a developmental disability or mental health condition. Any restriction must meet a specific need, as described above.

How do providers keep participants safe when eliminating restrictions they have had in place?

Waiver participants will likely need support, education, mentoring or coaching from their IPC team members on making good choices and understanding natural consequences, which is why they qualify for waiver services, but the restrictions on rights should not keep them from living life and making adult decisions if they age 18 or older. A guardianship or waiver program should not take away their rights to be an adult and be empowered to pursue a life that is chosen by them and according to their preferences, values and desires, not the desires and values of everyone around them. The participant may fail at something or have a close call, but these are training opportunities and should be areas that are explored through “habilitation” or “training” services.

What is the Division's Role in Reviewing Restrictions to Rights?

The Division needs to ensure a person’s rights are respected and upheld by providers. Therefore, all restrictions to rights must be written into the plan of care.

There are different types of restrictions, where do we document them in the plan?

1) **Rights restricted that are used to modify behavior**, must be addressed in a positive behavior support plan. *(They will be included in a Crisis Intervention Protocol after the new state rules go into effect, but for now a PBSP is where they are captured.)* A restriction must be time-limited and include a restoration plan in the PBSP.

2) Some rights may seem restricted because a participant may need lifelong support in a specific area, such as personal hygiene or to send and receive mail, due to a physical limitation. These situations must be explained in the Needs, Risks and Restrictions area of the plan to show how the team can provide support that helps the participant to exercise their right to the fullest extent possible.

3) For rights restricted due to health or safety reasons or due to a legal guardianship, the plan must still document how the team can support the person to exercise the right to the fullest extent possible. If text boxes on the EMWS plan are limiting the ability to write a thorough restoration or support plan for a right, then a separate protocol can be uploaded. The restoration plan must include the time limits on the restriction, the training or support the participant will receive to get the right restored or exercise the right to the greatest extent possible.

What will the Division staff be looking for when reviewing restrictions?

The Division's Participant Support Specialists reviewing and approving plans of care are required to start doing extra quality checks if a right is listed as restricted or that it *can be* restricted. Case managers should use this same scrutiny during the plan development process as they are talking with the IPC team members. Here are some questions that will help in reviewing the rights as a team:

- 1) Does the guardian have the authority to authorize the right to be restricted?
- 2) Is this restriction imposed only when absolutely necessary?
- 3) Is there a training objective during services to help a participant exercise their right in a safe and healthy manner so the risk and restriction can be avoided?
- 4) When was the last time other interventions and supports been tried to help the person exercise their right without restrictions?

The plan will need to show more documentation of what was discussed, tried, and what will be tried so that restrictions, especially due to behavioral issues, become a last resort.

What resources are available?

The next six months may be difficult for teams to readdress restrictions in light of the new rules. Here are additional resources that may help teams in discussing rights and restrictions, and include hyperlinks to the Division's webpage for each item:

- **Guardianship Guide and Training.** Guardians should watch the Division's guardianship training module on our YouTube channel or read through a guardianship manual we have available on our website or by contacting our office.
- **Participant Rights Guide.** The Division also has a new rights book for participants, guardians, case managers, and providers that may help with understanding the rights that must be honored for a person on the waiver.
- **Positive Behavior Support Plan Manual** is available on the Division's website to help teams with functional behavioral analysis and positive behavior support plans (that do not include restrictions).
- **HCB Setting Advocacy Guide.** Also, guidance on the new federal rules was made available to participants and guardians through booklets that were sent to case managers and reviewed during home visits over the past couple months. This guide is on the Division's website (Health.wyo.gov/ddd) as well as the waiver transition plans for the new HCB requirements.
- **Sample Restoration plans.** The Division has examples of thorough right restoration plans on the case manager forms and information website that may help teams look at restoring a right through additional training and evaluations.
- **IPC eGuide revised.** In June, the IPC eGuide will be posted with Chapters 1-4 revised that includes the new expectations and instructions for rights restrictions in the plan and gives more clarification for addressing "house rules" and popular restrictions.

For Questions

The Division will have a follow-up discussion on this topic during the Provider Support Call on June 29, 2015, which will further address any questions surrounding this process change. The call in number is 1-877-278-2734 Access Code 252484. Please save the date if you are interested in participating or asking questions. As always, submit your questions to your provider support specialist to help us prepare the most thorough response to your question before the call or contact our main office line at (307) 777-7115 if you have concerns or questions regarding these changes.