

What does the Centers for Medicare and Medicaid Services (CMS) say about a restriction to a person's rights?

Any restriction to a participant's rights MUST be specific to an assessed need.

The new CMS rules for HCBS services clarify many new requirements if a person's rights will be restricted.

CMS wants to ensure a right is only restricted when absolutely appropriate and only in a manner that fits the assessed need. The new rules require that the state and providers protect the rights of participants and avoid unfair or undue restrictions.

For a participant who has a need for a right to be restricted, the person and their team must make decisions based on that person's assessed need for a restriction, and not base a decision solely on diagnosis, medical condition or a possible behavior that happens on occasion. The restriction MUST be justified and documented in the person-centered service plan.

The new CMS rule states that a restriction must be addressed by the following 8 points and documented in the person-centered service plan:

1

Identify a specific individualized assessed need

5

Include regular collection and review of data to measure the ongoing effectiveness of the restriction

2

Document positive interventions and supports tried prior to the restriction

6

Established time limits for periodic review of the restriction

3

Documents less intrusive methods that have been tried and were unsuccessful

7

Obtain individual's informed consent

4

Provide a clear description of the condition that is directly proportionate to the assessed need

8

Provide assurance that interventions and supports will cause no harm

In addition to the 8 points, a restriction must have a restoration plan that addresses the following:

- Minimize the effect of the restriction
- Assist the participant with exercising their rights more fully
- Ensure that a participant's rights are not completely removed
- Identify what part of the right is restricted
- Set goals for restoration of rights (*participant training*)
- Establish time limits for periodic reviews to determine if the restriction is still necessary or can be terminated

Restrictions proportionate to the specific need

Restrictions MUST be proportionate to a participant's specific need.

Examples of restrictions that are NOT proportionate to a specific need:

- a. A restriction from going into the community because a person yelled at a housemate.
- b. A restriction from using the phone because the person has tendency to call 911
- c. A restriction from talking to family members or friends because they did not do a chore

Example of a restriction that IS proportionate to a specific need:

- a. A restriction from the community because a person is making threats to harm another individual

NOTE: The person must have positive support interventions tried before the restriction occurs. If unsuccessful and the restriction from the community is still needed, positive interventions must continue to help them work through the behavior during the time they are restricted.

- Once the person is no longer a threat, the restriction MUST be lifted
- The goal cannot be to give punitive discipline because of their behavior, but to ensure that their right is restored as soon as possible