

Provider Training Series

Chapter 45, Section 4

Rights of Participants Receiving Services (Module #2)

Wyoming Department of Health
Division of Healthcare Financing
DD Waiver Provider Training Series



Welcome to the Wyoming Department of Health, Division of Healthcare Financing (Division), Developmental Disabilities Section Provider Training Series for Chapter 45 of the Department of Health's Medicaid Rules (Rules). These rules govern the home and community based Comprehensive and Supports Waivers, hereinafter referred to as the DD Waivers.

Chapter 45, Section 15(d) states that all persons qualified to provide waiver services shall complete training in specific areas prior to delivering services. Although some provider organizations may choose to develop their own training modules, individuals who complete all of the Series training modules and associated training summaries will be in compliance with this specific requirement. Please note that there are provider training requirements established throughout Chapter 45, and it is the responsibility of providers to ensure they meet **all** training requirements prior to delivering waiver services.

This module covers Section 4, which addresses the rights of participants receiving services.

Purpose of This Training



To familiarize providers with the rights and freedoms of DD waiver participants, to establish the importance of honoring those rights, and explain the process and potential risks associated with restricting a participant's rights.

The purpose of this training is to familiarize providers with the rights and freedoms of DD waiver participants, to establish the importance of honoring those rights, to explain the process and potential risks associated with restricting a participant's rights, and to identify provider requirements related to Section 4.

Training Agenda

- ▶ Participant rights
- ▶ Restricting participant rights
- ▶ Rights Restriction Review Tool
- ▶ Provider requirements and responsibilities

At the end of the module addressing the rights of participants receiving services, the following topics will have been introduced and explained.

- The rights of participants receiving services;
- The steps and considerations involved in restricting a participant's rights;
- How to use the Rights Restriction Review Tool to determine if a rights restriction meets established rules; and
- Provider requirements and responsibilities associated with implementing rights restrictions.

Please note that, for the purpose of these trainings, providers include provider staff and case managers, unless there is a specific need to make a distinction.

Choice



Freedom to make choices is a human right. Laws protect people's right to decide how to spend their money, make their own health care decisions, work for a living, and have relationships with friends and family.

Home and community-based waiver services are based on the tenet that people have the freedom to make choices that impact their lives. Whether the choices are related to big decisions such as who provides their services, where they live, or what they want for their future, or small decisions such as with whom they spend time, what and when they eat, and how they spend their day, having choice is paramount to human dignity. Facilitating individual choice is a crucial part of being a DD Waiver provider.

Participant Rights



Each participant receiving services has the same legal rights and responsibilities guaranteed to all other U.S. Citizens under the United States and Wyoming constitutions and federal and state laws.

Chapter 45, Section 4(a)

Human rights are rights inherent to all human beings, regardless of race, sex, nationality, ethnicity, language, religion, or any other status. Human rights include the right to life and liberty, freedom from slavery and torture, freedom of opinion and expression, the right to work and education, and many more. Everyone is entitled to these rights, without discrimination.

As established in Chapter 45, Section 4(a), each participant receiving services has the same legal rights and responsibilities guaranteed to all other U.S. Citizens under the United States and Wyoming constitutions and federal and state laws.

Rights Guaranteed to Waiver Participants

- ▶ The right to privacy;
- ▶ The right to freedom from restraint;
- ▶ The right to privacy in their sleeping or living quarters;
- ▶ The right to sleeping and living quarters that have entrance doors that can be locked by the participant, with only the participant and appropriate staffing having keys to doors;
- ▶ The right to choose with whom and where they live;
- ▶ Freedom to furnish and decorate their sleeping or living quarters within the lease or other agreement;
- ▶ Freedom and support to control their own schedules and activities;
- ▶ Freedom and support to have access to food at any time;
- ▶ Freedom to have visitors of their choosing at any time, and associate with people of their choosing;
- ▶ Freedom to communicate with people of their choosing;
- ▶ Freedom to keep and use their personal possessions and property;
- ▶ Control over how they spend their personal resources;
- ▶ The right to access the community; and
- ▶ The right to make and receive telephone calls.

Chapter 45, Section 4(c)(i) - (xiv)

In addition to basic human rights, participants of Comprehensive and Supports Waiver (DD Waiver) services have specific rights established in Section 4(c). These rights shall not be denied or limited, except to address a health or safety need. Rights include: **READ LIST**

Participant's Right to Refuse Services

- ▶ Participants of DD Waiver services have the right to refuse these services.
- ▶ Participants shall not be disciplined and cannot be charged a monetary fee for refusing service.
- ▶ Providers must develop and implement a policy that ensures this right.

Home and community-based waiver services are voluntary. Participants have the right to refuse these services, even for an hour or a day. As an example, a participant can choose to stay home rather than attending day time services in another setting. Let's face it...sometimes we all need a day to break routine and relax.

While participants have the right to refuse services, it is still important for the provider to encourage participation. A participant choosing to stay home and just relax for a day is understandable; however, unless health related, if this happens consistently then there is an indication that the services the participant is receiving may not be meeting their needs. Providers should talk to the participant and work to understand why the participant is not engaged in their services. If necessary, request a team meeting so the team can work with the participant to identify what isn't working, and get input as to what needs to change so the participant is ready and willing to participate.

In the event that a participant chooses to refuse services, the provider cannot charge the participant a monetary fee or impose any sort of disciplinary action.

Providers are required to develop and implement a policy that ensures this right. Policies will be discussed later in this module.

Rights That Cannot be Restricted

- ▶ Right to dignity and respect;
- ▶ Right to be free from coercion;
- ▶ Right to receive services in settings that are physically accessible to the participant; and
- ▶ Right to make calls to Protection and Advocacy, or state or federal oversight or protection agencies such as the Division or Department of Family Services.

Chapter 45, Section 4(b), Section 4(c)(xiv)

The requirements for imposing restrictions on a participant's rights will be discussed later in this module. While some participant rights can be restricted in limited situations, there are some rights that a provider cannot restrict, under any circumstances, during the course of providing DD Waiver services. These rights include: **READ LIST**

Treating participant's with dignity and respect is critical to providing DD Waiver services. This means that you:

- Honor the participant's preferences, interests, and goals;
- Facilitate opportunities for participants to make their own choices;
- Encourage participants to express their wishes, desires, and needs; and
- Design the services you provide to meet the participant's individual needs. Remember, what works for one person may not work for another.

Provider Coercion and Retaliation are Prohibited

- ▶ Providers shall not request or require participants to waive or limit their rights as a condition of receiving services.
Chapter 45, Section 4(f)
- ▶ Providers shall not intimidate, threaten, coerce, discriminate against, or take other retaliatory action against any individual who exercises any right established by, or for participation in any process provided in, these rules or the Wyoming Medical Assistance and Services Act.
Chapter 45, Section 4(g)

As established in Section 4(f), providers cannot request or require participants to waive or limit their rights as a condition of receiving services. Providers may choose to not serve an applicant, or provide notice that they will no longer serve a participant (the process of which is described in detail in Chapter 45, Section 22), but they may not offer their services only on the condition that the participant waive any of their rights.

Participants and legally authorized representatives are informed of their rights during the application process, and are reminded of those rights at least once every six months. They should know their rights, and should be exercising those rights while they are receiving services. Providers shall not intimidate, threaten, coerce, discriminate against, or take retaliatory action against an individual who exercises their rights. Retaliatory acts are also prohibited by any provider type if a participant, legally authorized representative, case manager or provider, or other plan of care team member files a complaint or incident, or is involved in an investigation resulting from a complaint or incident report.

Differences Between Children and Adults

- ▶ Parents typically exercise control of the rights of children.
- ▶ Wyoming law considers all people 18 years and older as adults.
- ▶ Rights restrictions must be documented for participants 18 years and older, even if they have a legally authorized representative.

When discussing rights, it is important to note that there are some differences between adults and children. Parents, or another court appointed guardian, typically exercise control of the rights of children. For requirements related to restrictions imposed on children, please reference the IPC Guide.

According to Wyoming statute, people 18 years of age and older are considered adults. Even if a participant has a legally authorized representative, any right that is restricted must meet the requirements outlined in Chapter 45, Section 4 and must be documented in the participant's IPC. We will discuss this later in the training, but it is important for providers, case managers, and legally authorized representatives to understand that the rights of a participant who is an adult cannot be restricted just because the legally authorized representative feels it is necessary.

Dignity of Risk

Providers must maximize a person's ability to make choices while minimizing the risk of endangering the person or others.



People need to have "the dignity of risk" and "the right to fail".

~ Patricia E. Deegan

A core value driving the DD Waivers is participant choice. Providers are tasked with supporting individuals in making choices in their lives. Often, a legally authorized representative, provider, or case manager may believe they know what is best for a participant, or that the participant will make a bad choice if given the freedoms required by the home and community based settings rule. Team members must remember that all individuals, including people who receive waiver services, have the right to make choices, even if those choices may result in poor outcomes. People learn by making mistakes. Providers and other members of the plan of care team must maximize a person's ability to make choices while minimizing the risk of endangering the person or others. Although we want to promote safety for participants, we want to be sure to value safety while supporting the participant's right to dignity of risk.

Restricting Participant Rights



When rights restrictions are deemed necessary, the IPC shall include a rights restriction protocol that addresses the reasons for the rights restriction, including the legal document, court order, guardianship papers, or medical order that allows a person other than the participant to authorize a restriction to be imposed.

Chapter 45, Section 4(h)

In limited circumstances, a participant's rights may be restricted. If a plan of care team determines that a restriction on a participant's rights is necessary, the reason for the restriction must be thoroughly documented in the IPC and meet the federal requirements for home and community-based services. Additionally, the legal document or medical orders that allows a person other than the participant to authorize a restriction must be uploaded into the Electronic Medicaid Waiver System (EMWS). Legal documents may include guardianship papers or the assignment of a representative payee by the Social Security Administration.

Things to Consider When Restricting a Participant's Rights

- ▶ Restricting the basic human rights of an individual is a **REALLY BIG DEAL!**
- ▶ Restricting an individual's rights must **NEVER** be for the convenience of a provider or legally authorized representative.
- ▶ Restricting an individual's rights may lead to increased frustration and incidents.

Restricting a participant's basic human rights should never be taken lightly, and should never be the only response to a challenging situation. The team needs to identify ways to address the concern that don't include limiting individual rights. Given that the waiver is intended to help people develop, learn, and keep skills, this might be an opportunity for participants and teams to identify meaningful goals and objectives. There must be a specific reason for imposing a rights restriction, and that reason can never be for the convenience of the provider or the legally authorized representative, or just because the legally authorized representative feels it would be in the best interest of the participant.

Think for a minute about how you would respond if you couldn't make basic decisions such as what you could eat, and when. Are you a coffee drinker? Do you like to settle down with a glass of wine after work? Are you all for a nightly dip into the chocolate ice-cream container? Imagine that you have just been told that you can't indulge in any of those pleasures any longer. Imagine being told that you *have* to make your bed every morning. How would you react?

When a person's rights are restricted, it takes away that person's control over their own life. When people don't have control, people may become frustrated and seek to find some control in other ways. This control may be demonstrated through an increase in outbursts, aggression, or other behavior that will challenge a provider.

If someone told me I couldn't have my coffee or wine, I am certain that my response would be less than optimal.

When can a rights restriction be imposed?

Rights shall not be denied or limited, except for the purpose of an identified health or safety need, which shall be included in the participant's IPC. *Chapter 45, Section 4(c)*

Chapter 45, Section 4(c) clearly states that a participant's rights shall not be denied or limited, except for the purpose of an identified health or safety need. If this need exists, it should be demonstrated throughout the participant's IPC, not just listed as a rights restriction.

As an example, adults have the right to access legal sexually explicit materials. This right cannot be restricted unless there is a written court order or written order from a licensed medical or behavioral practitioner based on verifiable history of illegal sexual activity or perceived intent of the participant to commit a crime of a sexual nature. Prohibiting access to such materials simply based on a moral judgement by others is not allowed.

Identify When a Restriction is Necessary

16

- ▶ Review concerns with the plan of care team.
- ▶ Ask questions.
- ▶ Review other supports that are available, and other strategies that have been tried in the past.
- ▶ Identify the safety need the team is trying to mitigate.
- ▶ Identify potential negative issues associated with the restriction.

The first key to identifying a need for a potential rights restriction is for the plan of care team to be on the same page and really understand the needs and risks of the participant. It is important for the team to work collaboratively to develop the best plan for the participant.

Before imposing a rights restriction, be sure to ask questions. Challenge the team to look at all of the supports that are available. Look for other ways to address the health or safety need that don't require a rights restriction. If the team finds a strategy that works, be sure to document this information in the IPC.

Be sure to identify the safety need that the team is working to mitigate. Often times what might at first seem like a safety need is really more of a personal preference of a legally authorized representative or provider. Is being overweight a safety concern as defined by a physician, or is it a fact that makes the legally authorized representative unhappy?

Any time the potential of a rights restriction is discussed, the team must consider the negative impact that it may have on the participant, and must determine if these negative issues have less of an impact on the participant than the risk the rights restriction is supposed to mitigate.

An example situation in which a safety concern could be utilized as the basis for a rights restriction is when a person has a medical diagnosis such as Polydipsia. Polydipsia is a condition in which an individual experiences an intense thirst and excessive drinking which, if not

addressed appropriately, may lead to undesired or even deadly health consequences. If an individual does not have the ability to appropriately self regulate the amount of their fluid intake, a restriction of their right to freely access and drink fluids may be appropriate. Even though appropriate, to implement such a rights restriction would require an order from a licensed medical or psychiatric practitioner and adherence to the rights restriction criteria outlined in this Section.

Points to Address When a Rights Restriction is Imposed

- ▶ Identification of the specific and individualized assessed need;
- ▶ Documentation of the positive interventions and supports used prior to any modification to the IPC;
- ▶ Documentation of less intrusive methods of meeting the need that have been tried but did not work;
- ▶ A clear description of the condition that is directly proportionate to the specific assessed need;
- ▶ A system of regular data collection and review to measure the ongoing effectiveness of the modification;
- ▶ Established time limits for periodic reviews, not to exceed six (6) months, to determine if the modification is still necessary or can be terminated;
- ▶ Informed consent of the individual; and
- ▶ Assurance that the interventions and supports will cause no harm to the individual.

Chapter 45, Section 4(h)(i)(A) - (H)

Chapter 45, Section 4(h)(i) establishes specific criteria that must be met before a restriction on a participant's rights can be imposed. The team must discuss these items, and the case manager must include them in the participant's IPC. These criteria include:

- Identification of the specific and individualized assessed need;
- Documentation of the positive interventions and supports used prior to any modification to the IPC;
- Documentation of less intrusive methods of meeting the need that have been tried but did not work;
- A clear description of the condition that is directly proportionate to the specific assessed need;
- A system of regular data collection and review to measure the ongoing effectiveness of the modification;
- Established time limits for periodic reviews, not to exceed six (6) months, to determine if the modification is still necessary or can be terminated;
- Informed consent of the individual; and
- Assurance that the interventions and supports will cause no harm to the individual.

Chapter 45, Section 4(h)(ii) also requires that the IPC address how the team will work to restore any right that has been limited or denied.

Implementing a Rights Restriction

- ▶ Train providers and provider staff members on how to implement restrictions and maintain participant dignity.
- ▶ Educate participants.
- ▶ Identify what part(s) of the right the participant can exercise.
- ▶ Track, document, and report.
- ▶ Communicate changing needs and associated risks.

Any person who delivers services to a participant must understand each participant's rights, as well as specific limitations of those rights. The IPC must include detail on how the provider will impose the restriction, and how the dignity of the participant will be maintained. Providers must ensure that this information is adequately communicated to all staff members. Individuals involved in the day-to-day work must have the right information! Staff training needs to be a recurring agenda item; it cannot just happen once. Needs of participants change on a regular basis, and so should the training and the support that is offered to staff. Positive support and an atmosphere of improvement starts at the top. Staff members can only continue to grow if there is an expectation for them to do so.

Participants need to understand how and why their rights are restricted, but more importantly, they need to understand what they need to do and the skills they need to demonstrate in order to have their rights reinstated.

Although a participant's rights may be restricted in some way, it is not an all or nothing proposition. A person's right to eat what they want, when they want may be restricted based on orders from a licensed medical professional; however, that participant can still have some control over what and when they eat. The team should work together to find creative ways to offer that person as much control as possible in their own life.

What happens if things don't work? What happens if things improve? Either way, you want to

make sure to document how you see health, behaviors, and decision making change or stay the same. Be sure the IPC includes the strategies that haven't worked, as well as those that have. These are elements that perhaps only you as the provider see on a daily basis. The team may not see these elements until it comes time to review the plan or if a crisis occurs. You need to ensure that you are documenting progress and are keeping the team informed. Often, Division staff members only see a plan for restoring rights documented as "the team will review." This type of plan depends 100% on you as the provider documenting progress and keeping the team informed.

Restoring a Participant's Rights

- ▶ Minimize the effects of the restriction.
- ▶ Encourage goals that address skills needed to restore the right.
- ▶ Assist participant with skill and knowledge development.
- ▶ Actively review the restriction and decrease over time, even if the right cannot be completely restored.

If a participant's rights have been restricted, they should have a concrete goal that addresses skills or behaviors they need to master in order to have that right restored. A restriction should not take the place of skill building for the participant, but should instead offer a roadmap for achieving more independence.

Rights restrictions must be reviewed at least every six months. During these reviews, the plan of care team should discuss ways in which the restriction can be relaxed, even if it can't be completely removed.

Restricting the Right to be Free From Restraint

- ▶ The court, legally authorized representative, or participant must authorize the limitation in writing.
- ▶ Letters from a licensed medical and behavioral professional that detail the medical and psychological contraindications are required.
- ▶ Other less restrictive interventions that will be used prior to the restraint must be included in the IPC (PBSP).

In rare circumstances, a restriction on a participant's right to be free from restraint can be imposed. Section 4(d) establishes that, before this type of rights restriction can be imposed, a court, participant, or participant's legally authorized representative must authorize the restriction in writing.

In addition to the written authorization, this type of rights restriction must be accompanied by letters from both a licensed medical professional and a licensed behavioral professional detailing the medical and psychological contraindications that may be associated with the restraint.

The Division is not requesting that teams seek permission from licensed professionals. If a restraint is part of a participant's IPC, it is important for the team, and especially the provider that may be performing the restraint, to understand the medical and psychological concerns that are present.

- Concerns such as brittle bones or respiratory challenges may be included in a letter from a medical professional.
- Past trauma or aversion to touch may be outlined in a letter from a behavioral professional.
- If there aren't any concerns, that should be noted in the letter(s) as well.

If a participant has restraint written into their plan of care, they are required to be under the

care of a medical and behavioral professional.

A restraint should be used as a last resort, and only applied if other less restrictive interventions has been tried and failed. Less restrictive interventions must be written into the IPC so all team members are aware of strategies that can be used to de-escalate situations and perhaps avoid the need for a restraint. These less restrictive interventions are usually located in the positive behavior support plan, which is a component of the IPC.

In addition to this section, Chapter 45, Section 18 establishes rules specific to the use of chemical, mechanical, and physical restraints.

The Division Can Reject a Rights Restriction

24

If the Division disallows a limitation of a right in an IPC, this decision will apply to any provider offering services to the participant.

If a rights restriction doesn't meet the requirements outlined in Section 4, the Division can reject the rights restriction. It is important to understand that if the rights restriction is rejected, this means that the rights restriction cannot be imposed by *any* DD Waiver provider.

The Division will not allow an unauthorized rights restriction based simply on the desire of a legally authorized representative or provider.

As an example, if a provider desires to have designated alone time with his family in the evening, he cannot formally or informally impose a bedroom curfew, or restrict client access of normally accessible portions of the home for that time period, as this would simply be based upon provider desire or convenience and not meet the criteria for a legally imposed rights restriction.

Another example is if a legally authorized representative feels that a participant makes unsafe dating choices. The legally authorized representative requests that the provider prohibit the participant from spending time with members of the opposite sex, and sets a list of pre-approved visitors that the participant is authorized to visit. Section 4(c)(ix) establishes participant freedom to have visitors of their choosing at any time, and associate with people of their choosing. A legally authorized representative's concern that the participant may make an unsafe dating choice does not constitute a health or safety risk, so this restriction would not be allowed.

Inadvertent Rights Restrictions




- ▶ “When you are finished vacuuming, then you can go to the movies.”
- ▶ “You can’t have dessert until you finish your dinner.”
- ▶ “It’s 10:00. Time to turn off your TV.”
- ▶ “You don’t need another soda. You’ve already had one today.”

Occasionally, providers or provider staff members impose limitations on the rights of participants without realizing it. The Division regularly sees the following circumstances when conducting site visits. **READ SLIDE.**

Sometimes these inadvertent rights restrictions are imposed because of provider or staff member preferences and beliefs. For example, Sally, the staff member who works with Jill and her roommates, read an article about the negative effects that sugar and grain have on a person’s immune system. Jill has Psoriasis, which is an autoimmune disease. Sally decides that Jill should stop eating Frosted Mini-Wheats, which is Jill’s favorite breakfast, because of the high grain and sugar content. Since Sally helps Jill and her roommates with her grocery shopping, Sally makes sure that the Frosted Mini-Wheats don’t make it into the grocery cart. When Jill doesn’t have her favored cereal, Sally suggests that she have eggs and plain yogurt for breakfast. Sally thought she helped Jill make a great choice, but what Sally did was restrict Jill’s right to eat what she wanted for breakfast.

Remember that, when providing services to adults, these types of “rules” are not allowed unless there is a rights restriction noted in the plan of care. Providers can encourage participants to make what most would consider to be good choices, but they cannot put arbitrary limitations on choices that adults without disabilities can make...even if the choice is viewed as a bad choice, or creates an inconvenient situation for the provider.

Rights Restriction Review Tool


Rights Restriction Review Tool

Name: _____ Date: _____ Right being restricted: _____

Rule	Question	Answer (Y/N)	Comments
1.	Does the plan identify a health or safety need for a rights restriction?	Yes - Go to Question 2 No - Right cannot be restricted. Contact case manager and provide them with technical assistance (TA), including reference to rule.	
2.	In the event for the rights restriction provided?	Yes - Go to Question 3 No - Right cannot be restricted. Contact case manager and provide them with TA, including reference to rule.	
Ch. 45 Section 45J	When rights restrictions are deemed necessary, the individualized plan of care shall include a rights restriction protocol that addresses the reasons for the rights restriction(s), including the legal documents, court order, guardianship papers, or medical order that allows a person other than the participant to authorize a restriction to be imposed.	<ul style="list-style-type: none"> Guardianship Order - does the scope of the guardianship cover the rights restriction(s) being imposed? <input type="checkbox"/> Y <input type="checkbox"/> N Medical Order <input type="checkbox"/> Y <input type="checkbox"/> N Court Order <input type="checkbox"/> Y <input type="checkbox"/> N Representative Person documentation <input type="checkbox"/> Y <input type="checkbox"/> N 	
	Does the reason include a	Yes - Go to Question 4	

This tool was created to guide the Participant Support Specialist in assuring that right restrictions listed in the participant's IPC are meeting regulations outlined in Chapter 45. Providers should use this tool to determine if a rights restriction is necessary and meets established criteria.

Because of the number of requirements that are associated with imposing a restriction on a participant's rights, the Division has developed the Rights Restriction Review Tool, which can be found on the [Forms and Document Library](#) page of the Division website, under the *References/Tools* section. The Tool was designed to guide the Participant Support Specialists in reviewing rights restrictions, and guide the case manager in writing the rights restriction. However, providers of all waiver services are encouraged to use the tool to determine if the restriction meets established criteria.

The Division has developed a specific training to guide case managers through the Rights Restriction Review Tool. This training can be found on the [Training](#) page of the Division website, under the *Case Manager Trainings* section.

Restriction Criteria Reviewed

- ▶ Required documentation
- ▶ Monitoring and responsibilities
- ▶ Previous methods
- ▶ Less restrictive interventions
- ▶ Proportionate restriction
- ▶ Data and periodic reviews
- ▶ Informed consent and assurances
- ▶ Rights restoration

The Rights Restriction Review Tool walks the user through the criteria that must be met in order to impose a rights restriction. This criteria includes:

- Assurance that guardianship papers, letters from medical professionals, or other required documentation is present;
- Assurance that the IPC addresses how the team will monitor the restriction and specific responsibilities the provider has in imposing the rights restriction;
- Previous strategies and less restrictive interventions that have been tried in order to lessen the rights restriction, but have failed;
- Assurance that the restriction is proportionate to the risk that is being mitigated;
- Demonstration that data is being collected and regular reviews are being conducted to determine if the restriction is still appropriate;
- Demonstration that the participant and legally authorized representative have been fully informed on why and how a rights restriction will be imposed;
- Assurance that the rights restriction will not cause harm to the participant; and
- A detailed plan on how the team will work with the participant to restore the right or lessen the restriction over time.

Division Review of Rights Restriction Implementation

- ▶ Provider Support Specialist may review during certification renewal visits or through incident reporting and complaint reviews.
- ▶ Ensure the IPC and applicable Department of Health Rules are followed.
- ▶ Violations will require case manager and provider follow-up to rectify the area of concern.

Implementation of the restriction of participant rights may be reviewed as part of a provider's certification renewal, or as a result of a complaint or incident report. Case managers must ensure that the rights restriction meets the requirements established in rule. Providers must ensure that they are following the restriction that has been included in the participant's IPC and accepted by the plan of care team.

If the Division identifies deficiencies in how the rights restriction is explained in the IPC or in how the provider is imposing the restriction, follow-up including resubmitting the IPC, provider corrective action, or eliminating the rights restriction may be required.

Provider Requirements and Responsibilities



A provider that offers direct services shall have and implement specific policies and procedures.

Chapter 45, Section 4(e)

Chapter 45, Section 4(e) establishes specific policies and procedures that DD Waiver providers must implement.

Required Provider Policies and Procedures

- ▶ Participants have the opportunity to maximize their rights and responsibilities;
- ▶ Participants have the right to refuse services and shall not be disciplined or charged with a monetary fee for refusing home and community based waiver services;
- ▶ Participants, parents of a minor, and legally authorized representatives are informed of the participant's rights and responsibilities;
- ▶ Participants are supported in exercising their rights while receiving waiver services;
- ▶ Rights shall not be treated as privileges or things that should be earned; and
- ▶ Retaliation against a participant's services and supports due to the participant, family members, or legally authorized representatives advocating on behalf of the participant or initiating a complaint with an outside agency, is prohibited.

Chapter 45, Section 4(e)(i) - (vi)

Provider policies and procedures must address:

- The participant's opportunity to maximize their right and responsibilities;
- The participant's right to refuse services without being disciplined or charged a fee for refusing services;
- How and when the people will be informed of the participant's rights and responsibilities;
- How the provider will support participants in exercising their rights;
- That rights will not be treated as privileges or something that must be earned; and
- A prohibition of retaliatory practices.

These policies and procedures must be given to participants and legally authorized representatives when the participant enters services, at least annually thereafter, and any time a significant change occurs. The policies and procedures must be presented in a manner that is easily understood; given verbally, in writing, or in other modes of communication that may be necessary for understanding; and in the native language of the participant or legally authorized representative.

The Division has developed general policy templates, which can be found on the [Forms and Document Library](#) page of the Division website, under the *Certification Forms* tab. Providers may use the example policies as a starting point to develop policies that are specific to their circumstances. Providers are obligated to follow the policies that they adopt.

Please note that there are policy and procedure requirements established throughout Chapter 45, and it is the responsibility of providers to ensure they develop and implement all required policies and procedures. Many of these requirements will be addressed in other Provider Training Series Modules, but it is ultimately up to the provider to ensure these requirements are met.

Provider Responsibilities

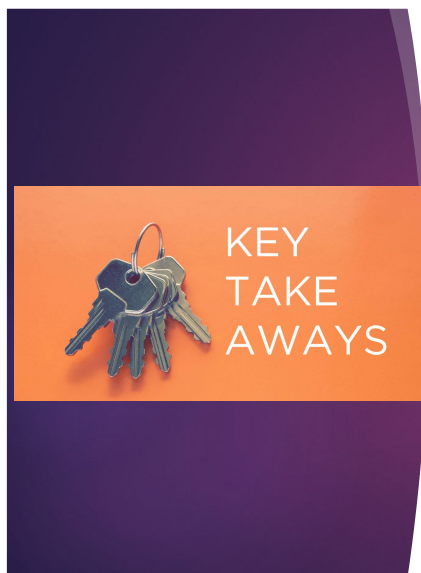
- ▶ Ask questions;
- ▶ Work with participant to lessen restrictions over time;
- ▶ Review and maintain documents; and
- ▶ Voice concerns.

Providers are responsible for imposing rights restrictions, and this is not a responsibility that should be taken lightly. Providers need to ask questions

- Why is this right being restricted?
- Is this for the good of the participant?
- Has the proper authorization been obtained?
- What can I do to ensure that this person has as much control over their own life as possible?
- Are there other strategies that the team can try rather than restricting this person's rights?

You should be working with the participant to teach them skills, impart knowledge, and encourage behavior that is going to help them gain full restoration of their rights over time. The provider's job should not be to limit a participant's life, but to help the participant live the fullest life they can. The more rights the participant can exercise, the higher their quality of life will be.

If you have any concerns, it is your responsibility to voice them. You are part of a team that is charged with advocating for the participant, and it is your job to bring any concerns or solutions to the team for discussion.



1. Participants of DD Waiver services have the same rights and responsibilities as other US Citizens.
2. A participant's rights should only be restricted as a last resort, and should be done in a way that protects their dignity.
3. The plan of care team must follow specific steps in order to restrict a participant's rights.
4. Providers must ask questions, voice concerns, and work to lessen restrictions over time.
5. Providers cannot restrict a right if it is not specifically listed in the IPC.

Before you complete this training, we'd like to review some of the key takeaways:

1. Human rights ensure basic equality and humanity. They protect vulnerable populations from abuse, and encourage people to exercise their freedoms of speech and religion. They allow people to love whom they choose, and give people access to education. Participants of DD waiver services can enjoy and exercise their rights, and providers of waiver services are obligated to facilitate opportunities for them to do so.
2. There are circumstances in which a participant's rights can be limited, but rights restrictions should be imposed only as a last resort. There may be other ways to address health or safety needs without going straight to a rights restriction. If a rights restriction is imposed, the participant should be afforded every opportunity to be involved and have as much control as possible.
3. If a participant's rights are restricted, the plan of care team must discuss the points outlined in Slide 16, and the case manager must address this information in the IPC. The Rights Restriction Review Tool is available to help case managers and plan of care teams ensure that rights restrictions meet standards outlined in rule.
4. Providers are obligated to ask questions, voice concerns, and work to lessen restrictions over time. The provider's job should not be to limit a participant's life, but to help the participant live the fullest life they can. The more rights the participant can exercise, the better their life will be.
5. If a rights restriction is not listed in the IPC, providers cannot restrict the right.

Questions???

Contact your Provider or Participant Support Specialist

<https://health.wyo.gov/healthcarefin/dd/contacts-and-important-links/>

This ends the training on the rights of participants receiving DD waiver services that has been conducted by the Division of Healthcare Financing, Developmental Disabilities Section. If you have questions related to the information in this training, please contact your Provider or Participant Support Specialist. Contact information can be found by clicking on the link provided in the slide.

Please be sure to complete a summary of this training so that you can demonstrate that you received training on the rights of participants receiving services.