

Case Manager Support Call

Individual Plan of Care Rights Screen

Wyoming Department of Health
Division of Healthcare Financing
Developmental Disabilities Section
September 14, 2020



Welcome to the Division of Healthcare Financing (Division), Developmental Disabilities Section Case Manager Support Call Training. The participant support unit is continuing to provide trainings covering the plan mod links section of EMWS. These links are located on the left hand side of the individualized plan of care.

Today's training will be focusing on participant rights and revisions to the Rights screen.

Purpose of This Training



To provide guidance and familiarize case managers 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.

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The purpose of this training is to provide guidance and familiarize case managers 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 requirements related to Chapter 45, Section 4 of the Department of Health's Medicaid Rules.

Wyoming Medicaid Rules can be found on the Public Notices, Regulatory Documents, and Reports page of the Division website, under the Rules tab.

Training Agenda

- Participant rights
- Restricting participant rights
- Rights Restriction Review Tool
- Revisions to Rights Screen in EMWS
- Case manager and provider requirements and responsibilities

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At the end of this training, 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;
- Revisions to the rights screen in EMWS; and,
- Case manager and provider requirements and responsibilities associated with implementing rights restrictions.

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 case manager.

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)

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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)

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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.
- Case managers must verify billing to ensure refusals are not billed as a provided service.

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 plan of care team 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 and case managers should talk to the participant and work to understand why the participant is not engaged in their services. If necessary, conduct 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.

Case managers are required to monitor when a participant refuses services in order to verify billing during the case manager's monthly review of provider billing. If a person is continually refusing services, case managers should discuss this decision with the participant to ensure the current supports and services meet the participants desires and needs.

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)

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The requirements for imposing restrictions on a participant's rights will be discussed later in this training. While some participant rights can be restricted in limited situations, there are some rights that cannot be restricted, 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 provided 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)

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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.

Case managers are responsible for informing participants and legally authorized representatives of their rights during the application process, and throughout the year at team meetings and during home visits. Participants 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.

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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, which can be found on the [Providers and Case Managers](#) page of the Division website, under the Case Manager and Provider Reference Materials toggle.

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

Case managers and providers must maximize a person's ability to make choices while minimizing the risk of endangering the person or others.



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A core value driving the DD Waivers is participant choice. Case managers and 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. Case managers 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.

Please remember, the legally authorized representative's preference in the absence of a health and safety risk cannot be used as a reason to limit a participant's rights

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)

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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 due to health and safety needs, 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 to the rights screen in the Electronic Medicaid Waiver System (EMWS). Legal documents may include guardianship papers or the assignment of a representative payee by the Social Security Administration.

The Division has developed a rights restriction tool to help teams determine when a rights restriction is necessary and if it meets the criteria for a restriction. We'll discuss the tool later in this training.

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.

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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 the team.

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.

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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. 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. Similarly, if a Participant Support or Provider Support Specialist reviews the IPC as part of a quality improvement review or as a result of an incident, and identifies rights restrictions that do not comply with Rule, the case managers will be contacted and required to either come into compliance or remove the restriction. Restrictions cannot be enforced unless they comply with the rules established in Chapter 45.

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 may be required, including re-submitting the IPC, provider corrective action, or eliminating the rights restriction.

Rights Screen

- Changes have been made in EMWS
- Rights screen will look similar to the Rights Restriction Review Tool
- Effective September 15, 2020

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The Division has made revisions to the Rights screen in EMWS to mirror the Rights Restriction Review Tool. These revisions will be released on September 15, 2020. As of this date, plan renewals and modifications will reflect the new format and all sections must be completed before submitting the plan or modification. This change will allow the IPC team and Division staff to easily see the reasons for a rights restriction, as well as how and when a provider can implement a rights restriction.

Rights Screen

Freedom and support to access food at any time	
<input checked="" type="radio"/> Yes <input type="radio"/> No	
Explain why the right is being restricted. Describe the assessed health or safety need that necessitates the restriction.	Explain and upload the document that authorizes someone besides the participant to restrict the right. Upload any supporting documentation for this right restriction: (protocols, letters/ notes from medical professionals, data) Note: Guardianship Orders must be current and reflect the guardian's authority to restrict the specific right.
<input type="text"/>	<input type="text"/> <input type="button" value="Choose Files"/> No file chosen
When is the waiver provider expected to restrict the right? Describe behaviors, times, places, etc. Describe how the provider will ensure dignity and respect of the participant while restricting this right.	How is the waiver provider expected to restrict the right?
<input type="text"/>	<input type="text"/>

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The case manager is required to complete each of the eight boxes on the Rights screen, and include a document that authorizes someone besides the participant to restrict the right. Even if the document exists elsewhere in the IPC, it will need to be uploaded here as well. Each of the questions directly corresponds to a provision of Chapter 45, Section 4, and must be answered. This slide provides a visual of the first set of boxes. The remaining boxes appear on the following slide.

Rights Screen

<p>Prior to deciding on a rights restriction, describe any positive interventions or alternatives to restricting the right that were used. Explain what they were, how you collected information or data showing they were unsuccessful and why they didn't work. Note: not restricting the right previously is not sufficient information.</p> <input type="text"/>	<p>What information/data is the provider required to collect to ensure the restriction is working to address the health or safety need? You must include the frequency of the collection; how often the team will review the information; and how the team will determine if the restriction is successful.</p> <input type="text"/>
<p>Describe how the restriction will be reviewed by the team, and the team's plan for restoring the right.</p> <input type="text"/>	<p>How was the participant's informed consent obtained for this restriction to be added to the plan of care?</p> <input type="text"/>
<p>Has the entire IPC team including the participant, providers, and LAR agreed that this right restriction is necessary?</p> <p><input type="radio"/> Yes <input checked="" type="radio"/> No</p>	

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For examples of how to complete each box, please refer to the IPC Guide. In addition to completing the eight boxes, the case manager must confirm that the IPC team has agreed to the rights restriction and believes that it is necessary to protect the health and safety of the participant.

Case Manager Responsibilities

- When the team is considering a rights restriction, ask questions;
- Work with participant to lessen restrictions over time;
- Review and maintain documents; and
- Voice concerns.

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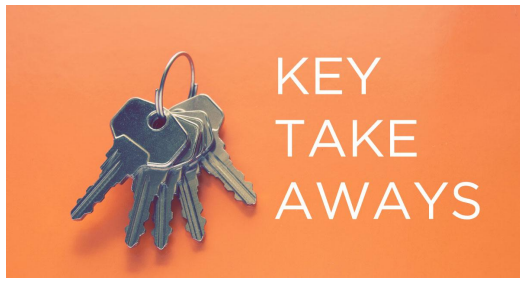
Case managers are responsible for training providers on the IPC. If a team determines that a rights restriction is necessary to protect a participant's health or safety, the case manager should be facilitating responses to team questions.

The Division has encouraged providers to ask questions at team meetings. Some of suggested questions that a case manager should be prepared to address include:

- What health or safety need has the team identified?
- What evidence proves that this is a need? (for example, critical incidents, what about a medical condition constitutes a need restriction)
- How is this restriction going to help meet that need?
- 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?
- What information is the team expecting providers to collect to show whether or not the restriction is working?
- What can the team do to ensure the end goal is full restoration of the participant'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 adhere to rules established in Chapter 45.
3. Case managers must ask questions of the IPC team, voice concerns, and work to lessen restrictions over time.
4. Providers cannot restrict a right if it is not specifically listed in the IPC.
5. Teams are encouraged to use the Rights Restriction Review Tool

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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 when a health or safety NEED is present. There may be other ways to address health or safety concerns 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. Case managers are obligated to ask questions, voice concerns, and work with teams 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.
4. 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.
5. If a rights restriction is not listed in the IPC, providers cannot restrict the right.
6. 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. Case managers

1. should share the Tool with all members of the IPC team. The updated Rights screen will mirror the Tool effective September 15, 2020.



Questions???

Contact your Provider or Participant Support Specialist

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

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Thank you for attending the training on participant rights and the Rights screen in EWMS, 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.