



HOME AND  
COMMUNITY-  
BASED  
SERVICES

WYOMING DEPARTMENT OF  
DIVISION OF HEALTHCARE FINANCING

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# Community Choices Waiver

## HCBS Rights & Boundaries

Wyoming Department of Health  
Division of Healthcare Financing  
Home and Community-Based Services Section  
January 30, 2023



Good afternoon and welcome to the Community Choices Waiver, or CCW, provider support call training. Today's training will cover the topic of HCBS Rights and Boundaries. My name is Barb Strasser, I am an Incident Management Specialist for the Home and Community Based Services Section.

# Training Agenda

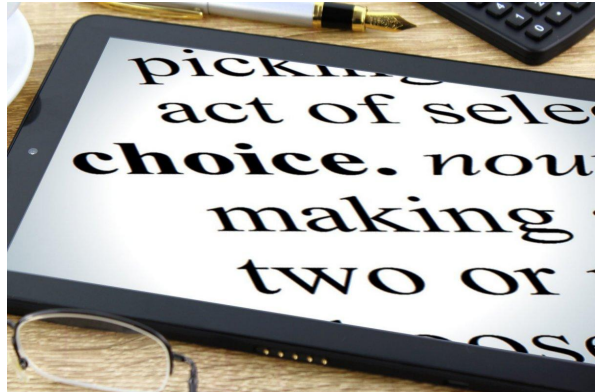
- This training will discuss
  - ◆ HCBS participant and provider rights
  - ◆ Best practices for your organization and staff
  - ◆ Setting and maintaining boundaries

Today we will be discussing Home and Community Based Services, which we will refer to as HCBS, that are provided through the CCW. The CCW is an HCBS waiver, meaning it is designed to support individuals in their homes and communities as an alternative to institutional care. As we explore the philosophy of HCBS and the difference between institutional care and HCBS, we will discuss HCBS participant and provider rights, best practices for your organization and staff, as well as setting boundaries and maintaining those boundaries.

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## Choice

- Participants have the ability to choose who provides their services and when.
- Providers choose the participants they support based on the ability to meet the needs of the participant.



Before we dive into today's training, let's take a moment to reflect on a basic tenet of HCBS waiver - Choice. HCBS are intended to provide participants a choice between traditional institutional care to meet their needs or care provided to them in their own home. Participants of the CCW have the ability to choose who provides their services and when.

The HCBS waiver also includes a provider's ability to choose the participants they serve. Providers of the HCBS may often find that the needs of the participant, the staffing patterns, and other components of waiver service needs can change in the blink of an eye. HCBS waiver providers must do what is best for the participants they serve.

# HCBS is Not Institutional

- What is an institution?
  - ◆ Any setting that is located in a building that is also a publicly or privately operated facility that provides inpatient institutional treatment, any setting that is in a building on the grounds of, or immediately adjacent to, a public institution, OR any other setting that has the effect of isolating individuals receiving Medicaid HCBS from the broader community of individuals not receiving Medicaid HCBS.
- The goal of the CCW program is to aid participants who wish to age in place.

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To ensure our understanding, we must ask “What is an institution?” According to Centers for Medicare and Medicaid Services (CMS) an institution is defined as “Any setting that is located in a building that is also a publicly or privately operated facility that provides inpatient institutional treatment, any setting that is in a building on the grounds of, or immediately adjacent to, a public institution, OR any other setting that has the effect of isolating individuals receiving Medicaid HCBS from the broader community of individuals not receiving Medicaid HCBS.”

HCBS are designed to be home and community based. But what does that mean? The goal of the CCW program is to aid participants who wish to age in place. Meaning the services provided through the waiver should support the participant’s needs in their chosen environment. The providers of the CCW are part of the team that determines the best way to meet the participant’s needs and alleviate any barriers to receiving that care in the chosen settings.

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# Participant Rights

- Access the greater community
- Privacy
- Dignity
- Respect
- To be free from coercion and restraint
- To make choices about everyday activities
- To choose their services and who provides those services
- To have visitors of their choosing, when they choose
- To decorate or furnish their setting to their liking

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Just as a reminder, the CCW agreement between the Wyoming Department of Health and the Centers for Medicare and Medicaid Services (CMS) requires that participants are guaranteed the right to:

- Access the greater community
- Privacy
- Dignity
- Respect
- Be free from coercion and restraint
- Make choices about everyday activities
- Choose their services and who provides those services
- Have visitors of their choosing when they choose
- Decorate or furnish their settings to their liking

Over the next several slides we will dive into some best practices to support CCW participants with exercising their rights and how to support those rights while maintaining your own business' boundaries and limitations when it comes to delivering those services.

# HCBS v. Institutional

- CCW is intended to be the middle ground between self-care and institutional care.
- CCW providers address participant care needs in the participant's home.
- Institutions may require the waiver of some rights as part of their care.



It is important to understand the difference between HCBS and institutional settings . Consider your own needs and care. You are able to care for yourself in your home and throughout your day without assistance. When you are not able to care for yourself, you may find yourself admitted to an institution. HCBS is intended to be an in-between for CCW participants; the middle ground between self-care and institutional care. Unlike institutional care, CCW providers address unmet participant needs and provide the support that the participant is unable to provide to themselves while the person is in their home.

Institutional care often requires participants to waive some rights as part of their care. This might include limiting their access to the community while they receive care as an admitted patient of the institution. When you are providing support to a participant in their home or in the community, the participant must have full access to their community. It is crucial that you understand the participant's rights and responsibilities, as well as your own.

# What Would You Do?

- Louise is new to ALF
- Louise has a large family and frequent visitors
- Louise's relative plan a visit
- Louise's relatives are not allowed to visit her when they arrive.



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Let's consider this scenario and discuss the institutional limitations on the CCW participant.

Louise recently moved into an assisted living facility, which we will refer to as an ALF. Louise has a large family. When choosing the ALF she asked questions about visitor limitations. She was assured there was no limitation on the number allowed at any one time. The ALF even provided information about reserving larger spaces when her family would like to gather for meals. After moving into her unit at the selected ALF, Louise receives a call from a relative who will be in town the next day and asks if it is okay to visit when they arrive late that evening. Louise says she will wait up to let them in! Later that night, Louise receives a call from her relatives that the ALF staff have advised that visiting hours have ended and the relatives are not included in Louise's trusted contacts.

Imagine Louise's frustration. If she were still living in her own home, this would never have happened! HCBS supports the rights of the participant, no different than yours or mine. As demonstrated here, some organizational practices can restrict participant rights. Visiting hours may cause some confusion. The Division cannot expect a provider to allow anyone to come through their building at any time, right? Right. It is up to the provider to implement policies and procedures that support and guarantee the rights of the participant while maintaining reasonable organizational safeguards.

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## Easy Resolution

- Work together to review the visitor policy
- Provider should never *just* turn away a participant's guest.
- Take time to address Louise's concerns



So what should Louise do? Louise should talk to her team, her case manager, or maybe just the ALF. It's possible that the ALF has a policy that supports Louise's right to have visitors at any time, but may require additional information. The ALF may require advance notification of an after hours guest. This may be as simple as a phone call or notification to the facility attendants of the timeframe the guest is expected. This simple step might be necessary to ensure that someone is available to let the guest in, show the guest to Louise's room, and provide them guidance on the best way to exit the building when they have finished their visit. Would this requirement be a rights restriction? No. It supports Louise's right to have visitors of her choosing, anytime. The advance notice policy and procedure also supports the provider, their staff, and other participants' ability to be secure and safe in the facility.

We want to take a moment to address a simple step that the ALF could have taken to avoid Louise's frustration. A provider should never *just* turn away guests of a participant. In the event that Louise was unaware of the policy, the staff could check with Louise to see if she is expecting someone before turning them away. It is also important that the provider take time to address Louise's concerns and review the policy regarding visiting hours.



# Best Practices

- Be aware of your capacity
  - ◆ How many staff do I have? How many will I need?
  - ◆ Where does the participant live? How will staff get there?
  - ◆ Is there time available for staff to assist this participant appropriately within their schedule? Does the schedule work for the participant?
- Regularly assess the participant's needs and satisfaction
  - ◆ Are service needs being met?
  - ◆ Is the schedule still effective?
- Recognize your resources
  - ◆ Have a communication plan within the plan of care team

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Because HCBS services are chosen by the participant, they should be structured to meet the participants needs and wants. So what happens if the needs or wants change? Are providers expected to constantly change their policies and procedures to meet the ever-changing needs of participants? The answer to that question is not so simple. All policies and procedures must be compliant with CCW, Medicaid rule, and federal guidance, but should also be flexible and supportive of the success of everyone involved. Some of the best practices for successful HCBS policy and procedures are:

- Be aware of your capacity. Don't bite off more than you can chew. The unprecedented staffing crisis has affected the HCBS providers, just as it has for many businesses. Know what flexibility you have when it comes to staffing, travel, and time. Be prepared for unexpected issues by having a back up plan.
- Regularly assess participant needs and satisfaction. The root of HCBS is the participants that are supported. As their needs change with age or diagnosis, your support will change too.
- Recognize your resources. Remember you are part of a team that is working to bridge the gap between self care and institutional care for the participant. You are not alone in supporting the participant. Work with the case manager, the participant, and their support network to ensure the participants receive the care they need. Have a plan for communication and emergencies within the team.

# Communication

- Communication is key!
- Should happen early and often.
- Policies and procedures should be shared with participants, to outline what they can expect and what their responsibilities are
- As participant needs change, or policy changes, providers must continually assess their capacity for successful service delivery
- Communication can be the easiest solution for many service delivery issues.

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Considering our previous scenario with Louise, it's clear that there was some miscommunication somewhere. The provider's advance notice policy supported Louise's right to have a visitor of her choosing after hours, so why didn't she tell the staff at the ALF? Maybe she didn't know.

Communication is so important! Especially when it comes to HCBS. Communicating your expectations as a provider should occur early and often. Policies and procedures should be shared with participants to ensure they are aware of their responsibilities when they enter services and any time those policies change. As participant needs change, providers must assess their own capacity to support those needs within the policies and procedures that support successful service delivery. Communicating those changes and limitations is crucial to participant success.

One common communication problem is when a participant refuses to participate in the services as they have agreed. Let's say, you started supporting Mary 6 months ago and have always arrived at 8:30am. The last 3 times you have arrived at Mary's home she has been visiting with her sister, and declined services. Have Mary's needs changed? You call Mary later that afternoon and ask her if she wants to continue with services this week. Mary apologizes for the confusion of the last few visits and asks if it would be possible for you to come before 8am or after 10am when her sister leaves. Communication is key for successful HCBS.

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# Communication Policy and Procedures

- Your policies and procedures should support the process for handling service refusals.
- Don't confuse service refusals with cancellations or missed appointments.
- If you are struggling to meet a participant's needs, work with the case manager to support to support and facilitate communication about changes.
- Track your concerns as part of your service documentation, follow policies, procedures, and Medicaid Rule to report concerns appropriately

It is important to remember that the policies and procedures you implement can support the process for handling service refusals and map out the plan for how to resolve the issue with the team. Service refusals should not be confused with cancellations or missed appointments. Cancellation or missed appointment policies should provide information about the expectations of the provider and the participant when services are not provided due to a mutual agreement or advanced notification.

Working with the participant is fundamental for successful HCBS, but the Division recognizes that some situations may require additional support. When you are struggling to meet the needs of the participant, work with their case manager to support and facilitate communication about changes with the participant.

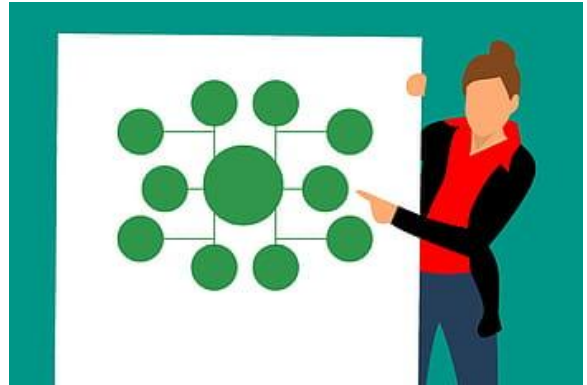
Tracking your concerns is also helpful in identifying changes to the participant's health and well-being. As part of your service documentation, you should include all issues and concerns - especially when services are missed or refused. Extended periods without services could indicate a significant change to the participant's health and well-being. If you have significant concerns or are unable to make contact with the participant it may be necessary to contact law enforcement or the Department of Family services to conduct a check on the participant's well-being, as well as submit a critical incident report to the Division as required. Organizational policies and procedures should also indicate when a concern becomes critical and additional

reporting.

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# Boundaries

- When your boundaries are communicated to the participant, they have an understanding of what is and is not tolerated, and what is expected from them.



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Knowing your capacity means that you have boundaries. CCW providers are tasked with the job of being responsive, but also being reasonable and responsible. As we previously discussed, communication of policies and procedures supports the expectations of each party of the service agreement. Staff should be aware of your organization's policies and procedures - especially if changes occur.

CCW participants may experience changes in their mood, behaviors, and mannerisms. Reporting changes and concerns with behaviors is crucial to safe and successful service delivery. Communicating these changes with the team will assist with developing a plan to address the changes to the participant's needs or health.

When you have boundaries, supported by policy and procedure, you can define the expectations for how a scenario will be handled and what can be expected as an outcome. However, a policy and procedure cannot restrict a participant's rights. If, for example, Louise has recently become aggressive during services. She hit you when you cleared her plate after breakfast and then again when you were assisting with a shower. What do you do? Report it. But to whom? Your policy and procedure should include documenting this change in the service documentation, making sure your concerns are conveyed to the team, and next steps for you.

When your boundaries are communicated to the participant, they have an

understanding of what is and is not tolerated, and what is expected from them. If your organization has a no tolerance policy for violence, you may need to make formal notification to your employer and the team regarding this change to ensure it does not happen again. As a provider, you also have rights. You have the right to be safe in your service delivery and the right to set and maintain your own boundaries and limitations for service delivery.

# Provider Protection

- Having strong policies and procedures when it comes to refusals, expectations, scheduling, and participant-specific needs is critical to protecting yourself from the unknown scenarios that could interfere with quality service delivery.
- Update your policies and procedures as often as necessary, but be sure to provide participants and their teams time to review and comment on planned changes to ensure everyone understands.

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Having strong policies and procedures when it comes to refusals, expectations, scheduling, and participant-specific needs is critical to protecting yourself from the unknown scenarios that could interfere with quality service delivery. These policies and procedures should be available at any time for anyone who may need more information about your operation and expectations. These policies and procedures should also be a significant part of your organization's intake process. If you have expectations for how to handle service refusals, cancellations, tolerated behaviors, and making changes to service delivery the participants you support must be aware of those expectations. We encourage providers to create policies and procedures that encourage all parties to address concerns at the lowest level possible. Working internally with the participant and their team, oftentimes, can be an easy and effective way to handle participant concerns.

Are we saying that your policies and procedures are written in stone? No. In fact, after the challenge of COVID-19, we know how important changing and updating your service delivery methods can be. It is important to remember that there is nothing worse than having a great policy or process that you don't follow. Update your policies and procedures as often as necessary, but be sure to provide participants and their teams time to review and comment on planned changes to ensure everyone understands.

# Abandonment of Services

- When a provider does not continue service delivery through the 30-day notice or participate in the transition can be considered abandonment of services.
- Abandoning services will result in adverse action, up to and including the provider's decertification and a referral to Medicaid Program Integrity.

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When providers are unable to maintain their boundaries, service delivery can become strenuous and unhealthy. If you are short staffed, services might be unavailable or rushed. If a participant continuously behaves in an unsafe or abusive manner, providers may struggle to assign staff to assist the participant. Will strong policies and procedures resolve the issue? Not necessarily. Sometimes, providers and participants are just not compatible, and that's okay.

When a provider is unable to provide satisfactory services due to either participant or provider conditions, there is no need to complicate the situation any more than it needs to be. Just as a participant can elect to end services with a provider for any reason, providers can end services with a participant. However, providers that wish to end services with a participant must do so by providing a 30 day notice. The 30 day notice should be provided to the participant and their case manager. The 30 day notice does not alleviate the provider of further service delivery. Providers must continue to support the participant through the 30 day notice or until the participant transitions to a new provider, whichever occurs first.

Transitions can be challenging, especially if one or more parties is unhappy with how the services came to an end. It's important for providers to remember that transitions can have an impact on the participant and the care they receive. Providers must participate and assist with transition planning to the best of their ability. Teamwork is



the key to a successful transition.

If a provider does not continue service delivery through the 30-day notice or refuses to participate in the transition, this can be considered an abandonment of service.

Abandoning services will result in adverse action, up to and including the provider's decertification and a referral to Medicaid Program Integrity.

# Key Takeaways

- HCBS are intended to be the in-between of self-care and institutional care.
- All organizations have boundaries and limitations when it comes to service delivery.
- As a CCW provider it is up to you to participate in participant transitions to the extent necessary.
- Communication is crucial to successful HCBS

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As we wrap up today's training, we want to take this opportunity to review the key takeaways from today's training session.

First, Waiver participants meet an institutional level of care, but the CCW has the services to meet those needs in the participant's chosen setting. Additionally, participants who receive institutional services are often required to waive some of their rights as a condition of treatment. HCBS is designed to support participant rights and freedoms as they age in place.

Next, All organizations have boundaries and limitations when it comes to service delivery. Many boundaries are based on the organization's staffing, required travel, and time. It is important that providers are aware of their own boundaries and limitations and that the policies and procedures that are in place support those boundaries and limitations. Policies and procedures are the organization's road map to the organizational operation and should offer protection for the provider and participant when issues occur.

We have also discussed the importance of transitions for participants. Transitions can be scary and confusing for a participant. Whether transitioning from an institution to the CCW or transitioning to a new provider, participants need support and information. As a CCW provider it is up to you to participate in participant transitions to the extent

necessary. When ending services with a participant, a 30 day notice is required to be provided to the case manager and the participant. CCW providers are obligated to continue to provide services through the 30-day notice period as failure to do so could result in corrective or adverse action, up to and including provider decertification and a referral to Medicaid Program Integrity.

Finally, the most important takeaway - COMMUNICATION! Whether it is communicating organizational policies and procedures during intake, changes for the participant, or scheduling: communication is crucial. Providers should regularly communicate with their staff, participants, case managers, and other team members as often as necessary to ensure understanding and expectations for care and quality service delivery. Having a plan for communication with participants and their team can be the easiest step to resolving issues and staying informed about the changing needs of the CCW participants you serve.



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# Thank you!

For additional questions or concerns, contact:

**Credentialing Team**

[wdh-hcbs-credentialing@wyo.gov](mailto:wdh-hcbs-credentialing@wyo.gov)

OR

**Incident Management Specialists**

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

Thank you for joining us on today's CCW Provider support call. This training and all other Provider Support call trainings are available on the [HCBS Training page](#).

Please feel free to direct any questions at this time to the Zoom chat.

For any additional questions or concerns please contact the Certification and Credentialing team (email on the slide) or the Incident Management Specialist assigned to your area. (Link on the slide)