



HOME AND
COMMUNITY-
BASED
SERVICES

WYOMING DEPARTMENT OF HEALTH
DIVISION OF HEALTHCARE FINANCING

Developmental Disabilities (DD) Waiver

HCBS Rights & Boundaries

Wyoming Department of Health
Division of Healthcare Financing
Home and Community-Based Services Section
February 27, 2023



Good afternoon and welcome to the Comprehensive and Supports Waivers, also known as the Developmental Disabilities waiver, provider support call training. Today's training will cover the topic of HCBS Rights and Boundaries. My name is Paul Delap, I am a Certification and Credentialing 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

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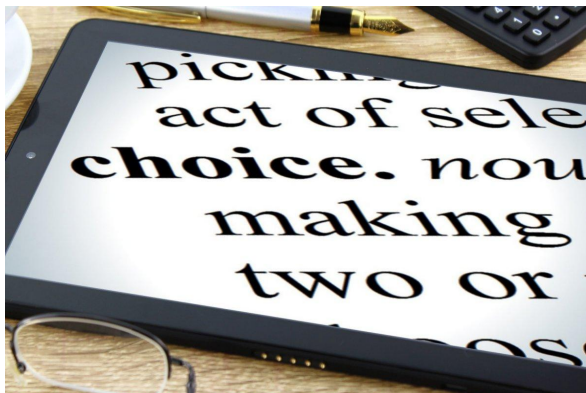
Today we will be discussing Home and Community Based Services, referred to as HCBS. The DD Waivers are HCBS waivers, meaning they are designed to support individuals in their homes and communities as an alternative to institutional care. As we explore the philosophy of HCBS and the difference between 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

Before we proceed, we need to discuss the use of the term 'participant' throughout this training. When we use the term participant we are referring to the person on the waiver receiving services. However, many DD waiver participants have legally authorized representatives (LARs) who assist them in making the best choices or decisions for their life. While this training may not specifically call out the LAR in situations presented, it is important to remember that if the participant has an LAR the participant's right to be involved in decisions and to be notified of information must be extended to the LAR.

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 waivers - Choice. HCBS are intended to provide participants a choice between traditional institutional care or care provided to them in their own home to meet their needs. Participants of the DD Waivers have the ability to choose who provides their services, where, and how.

HCBS waivers also guarantee a provider's ability to choose the participants they serve. Providers of HCBS may often find that the needs of the participant, the staffing patterns, and other components of waiver service can change in the blink of an eye. Regardless, HCBS waiver providers must make choices based on 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 DD waiver program is to aid participants who meet functional limitations with supports necessary to live the most independent life possible

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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 delivered in a participant’s home and community. But what does that mean? The goal of the DD Waivers is to aid participants who meet functional limitations with supports necessary to live the most independent life possible. The services provided through the waivers should support the participant’s needs in their chosen environment. DD Waiver providers are part of the team that determines the best way to meet the participant’s needs and alleviate any barriers to receiving the care in the chosen settings.

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 Comprehensive and Supports Waiver agreements between the Wyoming Department of Health and the Centers for Medicare and Medicaid Services (CMS) require 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 DD Waiver participants with exercising their rights and how to support those rights while maintaining your own business' boundaries and limitations when it comes to delivering services.

HCBS v. Institutional

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

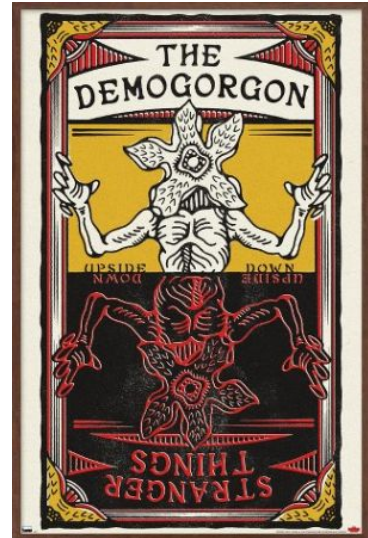


It is important to understand the difference between HCBS and institutional settings. To demonstrate, consider your own needs and care. You are able to care for yourself in your home and throughout your day without assistance. When you are not able to care for yourself, you may find yourself admitted to an institution. HCBS is intended to be an in-between for DD Waiver participants; the middle ground between self-care and institutional care. Unlike institutional care, DD Waiver providers address unmet participant self care needs through support services provided in the participant's home and community.

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?

- Thelma has just moved into a new provider residence and has decorated her new room
- Thelma also hung a poster outside of her room
- Thelma is excited to show her friend her poster, but it has been removed



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

Thelma recently moved into a new provider residence. Thelma is a big fan of the Netflix show - Stranger Things. She has a large collection of memorabilia she wants to decorate her room with. The new provider assures her that she is welcome to decorate her room as she wishes. After moving in, Thelma is excited to show her friends her new room. She asks her new provider if she can bring a friend over after Adult Day Services (ADS) and the provider agrees. While Thelma is at ADS, the provider notices that Thelma has put a frightening poster of the Demogorgon character on the hallway wall outside of her door and takes it down. When Thelma arrives home with her friend, she finds her poster missing and is angry.

Imagine Thelma's frustration. If she were still living in her own home, this would never have happened! HCBS supports the rights of the participant, which are no different than yours or mine. As demonstrated here, some provider actions can restrict participant rights. Providers and participants may have different tastes when it comes to home decor. The Division cannot expect a provider to allow a participant to decorate public areas of their shared homes however they want, 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.

So what should the provider do? A provider should never *just* remove or discard anything that belongs to a participant without their approval. In this scenario, the provider has an obligation to discuss the area that Thelma is able to decorate to her liking is inside of her room which does not include the hall outside. The provider could have offered to help find space within Thelma's room for the poster or suggested other alternatives. The provider could also work with Thelma to get approval from her roommates to leave the poster up. If they don't mind the poster, then maybe Thelma would be allowed to leave it up. This conversation should be supported by the provider's policy and procedures, as well as Thelma's lease or residential agreement. By talking through this with Thelma before taking action, the provider could have saved Thelma from hard or hurt feelings.

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

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 Medicaid Rule and federal guidance, but should also be flexible and support 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 Thelma, it's clear that there was some miscommunication somewhere. The provider's policy and residential agreement supported Thelma's right to decorate her living quarters to her liking, so why did she put her poster in the hallway? Maybe she didn't realize that the hallway was shared space that affected everyone in the home.

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 to 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 with companion services. Part of Mary's services include grocery shopping and meal prep. You and Mary agreed that going to the grocery store at 8:30 am would be the best time since the store isn't too busy. The last 3 times you have arrived at Mary's home she has been visiting with her sister, and declined to participate in her 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.

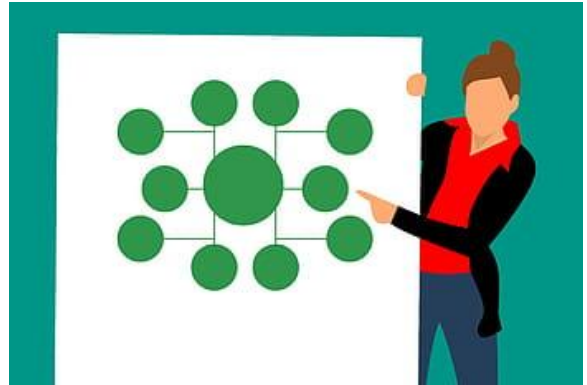
It is important to remember that the policies and procedures you implement can support the process for handling service refusals and map out the plan for how to resolve the issue with the team. Service refusals should not be confused with cancellations or missed appointments. Cancellation or missed appointment 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. Wyoming Medicaid Rule, Chapter 45 Section 4(e)(ii) prohibits providers from charging a monetary fee or any disciplinary action when participants refuse, cancel, or miss services.

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 needs and support services.

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 submit a critical incident report to the Division, including contacting law enforcement and the Department of Family services to conduct a check on the participant's well-being. Organizational policies and procedures should also indicate when concerns become critical and how to report them to the Division appropriately.

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. DD Waiver 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 when changes occur.

DD Waiver 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, Thelma has recently become aggressive during services. She hit you when you cleared her plate after breakfast and then again when you were assisting her with her 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 any 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 the person you are supporting has changes to their behaviors that have negative consequences for the participant, the staff, or the community, work with the team to develop strategies to help the participant deescalate, and conduct a behavioral analysis to determine the root cause of the escalation. Sometimes a participant may exhibit behaviors when they are feeling unsafe, sick, or don't like the staff. As a provider, you must evaluate the situation and then determine if the organization is able to continue to provide the services in a safe, healthy manner that meet the unique needs of the participant.

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 this 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 circumstances, 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. As outlined in Medicaid Rule, chapter 45 Section 22 the 30 day notice should be provided to the participant, their case manager, and the Division. 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, until the participant transitions to a new provider, or if a participant states they do not want further services from that 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 DD Waiver 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, HCBS are intended to be the in-between of self-care and institutional care. Waiver participants meet an institutional level of care, but the DD Waivers offer 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 are designed to support participant rights and freedoms in the least restrictive manner possible.

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 a DD Waiver or transitioning to a new provider, participants need support and

information. As a DD Waiver provider it is up to you to participate in participant transitions as necessary. When ending services with a participant, a 30 day notice is required to be provided to the case manager, the participant, and the Division. DD Waiver 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 they support, 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 DD Waiver participants you serve.



HOME AND
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WYOMING HEALTHCARE
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Thank you!

For additional questions or concerns, contact:

Credentialing Team

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 DD 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)