



HOME AND
COMMUNITY-
BASED
SERVICES

WYOMING DEPARTMENT OF HEALTH
DIVISION OF HEALTHCARE FINANCING

Community Choices Waiver

Community Choices Waiver Rights Restrictions and Service Plan Development

Wyoming Department of Health
Division of Healthcare Financing
Home and Community-Based Services Section
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Good afternoon. My name is Dama Misner and I am a Benefits and Eligibility Specialist for the Home and Community-Based Services Section of the Division of Healthcare Financing. Thank you for joining us today.

Acronyms and Abbreviations

- HCBS - Home and Community-Based Services
- Division/Department - Division of Healthcare Financing, Wyoming Department of Health
- CCW - Community Choices Waiver
- CMS - Centers for Medicare and Medicaid Services
- EMWS - Electronic Medicaid Waiver System
- ALF/ADS - Assisted Living Facility/Adult Day Services



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Before we get started, we'd like to go over some of the acronyms and abbreviations we will be using in today's training. The Medicaid system in general, and the home and community-based services program in particular, uses a lot of acronyms. Although most of you know these terms, for a new case manager, it can feel a bit like alphabet soup.

- We will often refer to the HCBS Section or HCBS program. HCBS stands for home and community-based services. We also refer to just HCB, which simply stands for home and community-based.
- The HCBS Section is organized under the Division of Healthcare Financing, which is a Division of the Wyoming Department of Health. We will sometimes refer to the Division or Department, which means Division of Healthcare Financing, or Department of Health.
- The Community Choices Waiver is most commonly referred to as the CCW or CCW program.
- We will occasionally refer to the Centers for Medicare and Medicaid Services. We will use CMS when referring to this federal agency.
- The Electronic Medicaid Waiver System, which we refer to as EMWS, refers to the system that houses the participant's electronic record. Case managers use EMWS to develop a participant's service plan.
- Finally, we will be talking about services that take place in assisted living facilities and adult day service programs. We refer to these services as ALF and ADS respectively.



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Review how and when a participant's rights can be restricted, and how this must be documented in the participant's service plan.

Over the past several months, the HCBS Section has had to roll service plans back when a restriction on a participant's rights is not accurately documented. The purpose of today's training is to review how and when a participant's rights can be restricted, and how the restriction must be documented in the participant's service plan.

Training Agenda

- Define a rights restriction
- Review federal and state guidance on rights restrictions
- Explain service plan requirements related to rights restrictions

By the end of this training, we will have defined rights restrictions, and reviewed the federal and state laws that establish how and when a rights restriction can be imposed. Finally, we will explain the requirements that case managers must meet when they develop and monitor service plans that include rights restrictions.

Choice



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Choice is a basic tenet of home and community-based waiver services.

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Choice is a basic tenet of home and community-based waiver services. You hear us say it at the beginning of every training, and we say it because we want it to be in the forefront of everyone's mind, even if what we are discussing isn't directly related to the participants you serve. Participants must have the freedom to choose the services they receive, who provides those services, where they live, with whom they spend time, and what they want for their future. Having choice is paramount to human dignity.

Restricting a participant's basic human rights is a really big deal, should never be taken lightly, and should never be the only response to a challenging situation. When a participant's rights are restricted on any level, some aspect of their choice has been taken from them. Whenever possible, teams must identify ways to address concerns that don't include limiting a participant's rights.

Defining Restrictive Interventions

- Limits a participant's movement.
- Limits a participant's rights.
- Limits a participant's access to:
 - ◆ Other individuals;
 - ◆ Locations; or
 - ◆ Activities.



DEFINE

According to the Waiver Technical Guidance issued by CMS, restrictive interventions limit a participant's movement, their access to other individuals, locations or activities, or their rights. Restrictive interventions also include the use of other aversive techniques, not including restraint or seclusion, that are designed to modify a participant's behavior.

State Authorities and Rules

→ Community Choices Waiver Agreement

◆ ALF, ADS, Skilled Nursing Facilities

→ Department of Aging Rules



◆ Chapter 7 - Adult Day Care Facilities

◆ Chapter 11 - Nursing Care Facilities

◆ Chapter 12 - Assisted Living Facilities

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As established in the CCW agreement with CMS, a limitation placed on a participant's full access to the greater community, their privacy, their independence in making life choices, their freedom to control their own schedules and activities, their access to food, or their ability to have visitors of their choosing at any time may only be permitted if they are receiving assisted living facility services, health model adult day services, or respite services in an assisted living or nursing care facility.

Assisted living, adult day, and nursing care facilities are required to comply with all protocols, practices, recordkeeping, and staff education and training requirements set forth in Chapter 7, Chapter 11, and Chapter 12 of the Wyoming Department of Health, Division of Aging Rules. These Chapters govern these settings, and establish the rules for imposing restrictive interventions and restraints. The Aging Division monitors providers for the unauthorized use or misapplication of restrictive interventions as part of the facility survey and licensure processes.

Federal Law

- 42 CFR 441.301(c)
- Addresses the person-centered service plan and process.
 - ◆ Setting must be integrated in, and support the participant's full access to the greater community
 - ◆ Ensures participant's right to privacy, dignity and respect, and freedom from coercion and restraint.
 - ◆ Any modification must be supported by a specific assessed need and justified in the service plan.



Section 42 of the Code of Federal Regulations, or CFR, addresses the person-centered planning process and service plan. This federal law requires HCBS settings to be fully integrated, and support the participant's access to the community. The law also requires providers to ensure the participant's right to privacy, dignity, and respect, and freedom from coercion and restraint. The participant must have a specific assessed need if there is a modification or restriction of their rights, and that need must be justified in their service plan.

Points to Address

- Identification of the specific and individualized assessed need;
- Documentation of the positive interventions and supports used prior to modification to the service plan;
- 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;
- Regular data collection and review to determine if modification is still necessary;
- Established time limits for periodic reviews to determine if the modification is still necessary;
- Informed consent of the individual; and
- Assurance that the interventions and supports will cause no harm to the individual.

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42 CFR 441.301(c)(4)(vi)(F) establishes specific criteria that must be met before a restriction on a participant's rights can be imposed. The participant's plan of care team must discuss these items, and the case manager must include them in the participant's service plan. These criteria include:

- Identification of the specific and individualized assessed need;
- Documentation of the positive interventions and supports used prior to modification to the service plan;
- 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;
- Regular data collection and review to determine if modification is still necessary;
- Established time limits for periodic reviews to determine if the modification is still necessary;
- Informed consent of the individual; and
- Assurance that the interventions and supports will cause no harm to the individual.

Decide When a Restriction is Necessary

- Identify the safety concern the team is trying to mitigate.
- Review other supports that are available, and other strategies that have been tried in the past.



- Identify potential negative issues associated with the restriction.

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The first key to identifying the 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 participant's service plan. 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 guardian or provider. Is being overweight a safety concern as defined by a physician, or is it a fact that makes the provider 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 the negative impact is somehow better than the risk that the rights restriction is supposed to mitigate.

When a person's rights are restricted, it takes away that person's control over their own life. 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. How would you react? When people don't have control, people may become frustrated and seek to find 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.

Document the Restriction

- Restriction is listed in the ALF, ADS, or Respite section of the service plan.
- Monitor and document concerns during monthly case management monitoring.



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When required, restrictive interventions are typically applied on an ongoing basis, such as a restriction on a participant's right to leave a memory care unit in an ALF, or limited access to food due to prescribed dietary restrictions; therefore, documentation is not required each time a restrictive intervention is applied. Case managers must list the restriction, and address the points established in the CFR, in the respective service section in EMWS. These screens pre-populate when the case manager chooses the ALF Memory Care option or if, through the planning process, the case manager indicates that there is a rights restriction listed in the service plan.

Case managers conduct monthly service plan monitoring activities in order to identify any changes in the participant's condition or circumstances, and ensure that rights restrictions are imposed as established in the participant's service plan. Case managers must report the unauthorized use or misapplication of restrictive interventions as a critical incident.

ALF Memory Care Rights Screen

Questions:

Participant was informed of all feasible alternatives for meeting his/her needs, including the opportunity to choose to receive services in his/her own home or in a provider owned/operated residential setting, and chooses to receive services in an assisted living facility. Yes No

The participant's specific unit/dwelling is owned, rented, or occupied under a legally enforceable agreement. Yes No

Upload Lease/Resident Agreement [Redacted] Update

* The participant has privacy in his/her sleeping or living unit. Yes No

* The participant's unit has lockable entrance doors, with the participant and appropriate staff having keys to doors, as needed. Yes No

The participant shares a unit with another resident. Yes No

* The participant was provided a choice of roommates. Yes No

* The participant has the freedom to furnish and decorate his/her sleeping or living unit. Yes No

* The participant has the freedom and support to control his/her schedules and activities. Yes No

* The participant has access to food at any time. Yes No

* The participant may have visitors of his/her choosing at any time. Yes No

* The setting is physically accessible to the participant. Yes No

The participant's assistance plan developed by the assisted living facility service provider:

* Restricts the participant's full access to the greater community. Yes No

* Restricts the participant's access to other individuals, locations, or activities. Yes No

* Restricts the participant's ability to seek employment and work in competitive integrated settings, engage in community life, or control personal resources. Yes No

* Restricts the participant's right to privacy. Yes No

* Restricts the participant's right to dignity and respect. Yes No

* Restricts the participant's individual initiative, autonomy, and independence in making life choices. Yes No

* Employs aversive methods (not including restraints or seclusion) to modify behavior. Yes No

* Includes the use of any restraint (physical, chemical, or mechanical) which restricts the movement or function of the participant or a portion of the participant's body to control acute, episodic behavior. Yes No

Upload Assistance Plan [Redacted] Update

* Otherwise limits a participant's rights in any way. Yes No

* Indicates that one response requires the rights form to be filled out

Addressed Risks & Needs

Here is an example of an ALF memory care rights page that has been completed for those individuals who have not had the opportunity to use this service, these are the questions that are asked. This form will populate in the service referral when you add ALF memory care.



Other Service Plan Expectations

Case managers must ensure that they meet the requirements established in state and federal law if they submit a service plan that contains a rights restriction. However, there are some overall expectations that case managers must meet every time they submit a service plan.



COMPLETE

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A quality service plan must have certain characteristics. Plans must accurately capture the participant's wants and needs to ensure the participant is able to live the life they want to live. Plans must be comprehensive in their content, encompassing not only participant needs and wants, but any support the participant needs to make decisions, achieve goals, or mitigate health and safety risks. Plans must be person-centered, and the participant must be involved in the plan development process. The case manager must execute a professional product, meaning that it must be well written and free of spelling and grammatical errors. The service plan must align with the CCW Service Index and the CCW agreement with CMS.

When a case manager submits a service plan, they must acknowledge that the service plan represents a complete and accurate picture of where the participant is at this point in their life.



Case managers must submit a participant's service plan in EMWS within 30 calendar days of the participant's initial eligibility determination. Annual service plan reviews must be submitted by the 15th day of the month prior to the plan start date.

Modifications to a participant's service plan must be submitted into EMWS at least seven calendar days prior to the date that the modification is to take effect. The case manager must ensure that they account for this timeline when they establish the effective date of the modification, or the modification may be rolled back to them, which can delay the implementation of the change that is being submitted.



John Hancock

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Federal law requires the participant to agree to the person-centered service plan, in writing, and include signatures of all individuals and providers responsible for its implementation. The case manager must ensure that they have collected all required signatures.



Also established in federal law is the requirement that a participant's person-centered service plan must be distributed to the participant and other people involved in their plan. Case managers must provide the full service plan to providers of direct care services. This includes the service plan summary from EMWS, the Participant Profile Assessment summary, and the LT101 Summary. Providers of indirect services, such as Transportation, Home-Delivered Meals, Personal Emergency Response Systems, and Homemaker Services, do not need these documents.

Just a friendly reminder...

Key Takeaways



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1. Participants of the CCW Waiver services have the same rights and responsibilities as other US Citizens.
2. Case managers must ask questions of the IPC team, voice concerns, and work to lessen restrictions over time.
3. When restricting a person's rights it must be supported by the appropriate documentation in the plan of care.
4. All team member signatures must be obtained before a right restriction can be implemented.

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As we end this training, we'd like to review some of the key items that case managers need to remember:

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. 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.

3. If a participant's rights are restricted, case managers must address this information in the IPC. A clear description of the rights restriction must be provided along with documentation to support the restriction, examples are a letter from a medical professional or a statement from SSI.

4. When rights restrictions are added to a plan of care the case manager needs to obtain all team member signatures to show that all team members including the participant are in agreement with the rights restrictions being added to the plan of

care. These signatures can be obtained using the Community Choices Waiver Plan of Care Team Signature and Verification form found on the Division website under HCBS Document Library.



Questions???

Contact your Benefits and Eligibility or Provider Support Specialist

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

Thank you for participating in the training on recent and upcoming changes to the Community Choices Waiver program. If you have questions related to the information in this training, please contact your area Benefits and Eligibility Specialist or Provider Support Specialist. Contact information can be found by visiting the web address provided in the slide.

Question Time!

- **Ground Rules**

- Assume best intentions
- Be respectful and professional
- Stay on topic



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