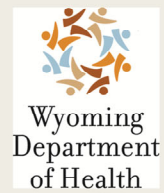


RIGHTS RESTRICTION REVIEW TOOL

Wyoming Department of Health
Division of Healthcare Financing
Developmental Disabilities Section
December 9, 2019



Home and Community Based Settings Rules

- March, 2014: New federal regulations for home and community based waivers
 - Found at <https://www.medicaid.gov/medicaid/hcbs/index.html>.
- June, 2017: New Department of Health Medicaid Rules promulgated
 - Included Chapter 45,
 - Section 4 - Rights of Participants Receiving Services
 - Section 13 - Standards for Home and Community Based Standards.
 - Found at <https://health.wyo.gov/healthcarefin/dd/bhd-public-notice/> under the *Rules* tab.
- Participant Rights - Must meet current federal standards as stated in Chapter 45, Section 13(iv):
 - *“Ensures an individual’s rights of privacy, dignity, respect, and freedom from coercion and restraint.”*

Dignity of Risk

- Providers and case managers must maximize a person's ability to make choices while minimizing the risk of endangering the person or others.
- Restrictions should be a last resort.
- Restrictions should not be based on the fear of what **could** happen.

Often, a guardian or provider may believe he or she knows 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 when those choices result in poor outcomes. People learn by making mistakes. Providers and case managers must maximize a person's ability to make choices while minimizing the risk of endangering the person or others.

Restrictions should be a last resort and should only be put in place if there is a health or safety issue that has been identified by a healthcare professional or court order. Restrictions should not be based on fears of what could happen.

Keeping individuals with disabilities safe is important. There are steps that guardians and providers can take, such as being aware of and learning about what health concerns or special conditions are unique for the participant. Share this information with other members of the team and remember that the participant's needs will change over time.

Rights Guaranteed to Waiver Participants:

1. The right to privacy, dignity, and respect;
2. The right to freedom from coercion or restraint;
3. Privacy in their sleeping or living quarters;
4. Sleeping and living quarters have entrance doors lockable by the individual, with only appropriate staff having keys to doors;
5. Individuals sharing quarters have a choice of roommates in that setting, and choose with whom and where they live;
6. Freedom to furnish and decorate their sleeping or living quarters within the lease or other agreement;
7. Freedom and support to control their own schedules and activities;
8. Freedom and support to have access to food at any time;
9. The ability to have visitors of their choosing at any time, and associate with people of their choosing;
10. The ability to communicate with people of their choosing;
11. Freedom to keep and use their personal possessions and property;
12. Control over how they spend their personal resources;
13. Settings that are physically accessible to the individual;
14. The right to access the community;
15. The right to make and receive telephone calls.
No person shall limit a participant's right to make calls to Protection & Advocacy, or state and federal oversight or protection agencies such as the Division or Department of Family Services.

Medicaid Rule, Chapter 45, Section 4 states: The following participant rights shall not be denied or limited, except for the purpose of an identified health or safety need, which shall be included in the participant's individualized plan of care. When rights restrictions are deemed necessary, the individualized plan of care shall include a rights restriction protocol that shall include the information highlighted in the rights restriction tool as outlined in Chapter 45 rule.

Please remember that a person's right to dignity, respect, and services provided in a setting that is physically accessible cannot be restricted.

Rights Restriction Review Tool Purpose

- A tool for Participant Support Staff (PSS) to ensure rights restrictions meet criteria.
- This tool is not required to be used by case managers, providers or other team members.
- Division encourages participant teams to use this tool as a guide.

This tool was created to guide the PSS in assuring that the rights restrictions in a participant's plan of care are meeting the Division of Healthcare Financing rules and regulations per chapter 45. This tool will be used in the review of plans of care when a restriction has been added. This tool can be found on the Division website. Please use this tool to guide you in the process of determining if a rights restriction is necessary and meets criteria per rule.

PSS Review – Required Documentation

Rule	Question	Action to take
	Does the plan identify a health or safety need for rights restriction?	Yes: go to the next question No – Cannot have the rights restriction; contact case manager and provide them with TA including reference to rule.
	Is the reason for the rights restriction provided?	Yes – go to the next question No – Cannot have the rights restriction; contact case manager and provide them with TA including reference to rule.
Ch. 45 Section 4(b)(i) The reasons for the rights restriction(s), 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.	• Guardianship Orders	Y N
	• Medical Order	Y N
	• Court Order	Y N
	Does the reason include a legal document, court order, guardianship papers, or medical order that allows a person other than the participant to authorize this restriction?	Yes – go to 3 No – Cannot have the rights restriction; contact case manager and provide them with TA including reference to rule.

- A health or safety need must be identified.
- Legal or medical documentation is required.

PSS Review Requirements: The PSS will look for guardianship, medical and court orders that support the need for the restriction with an explanation of who has the authority, aside from the participant, to limit rights. The PSS will then look at the medical order to determine what the health or safety need is related to the medical or physical disability and what the restriction entails. The order should be detailed, and signed and dated by the medical professional.

Example: If a participant has diabetes and a food restriction is imposed, a medical order explaining the participant's diagnosis and why the participant's diet should be monitored is required. The order should also explain what the risk is if the order isn't followed and how and why the restriction is needed. Please note, a prescription will not be accepted. This must be a detailed order from a medical professional. A new letter is required annually.

Example two: A guardian would like to restrict a participants phone usage because the participant is sending pictures to other individuals, and the guardian is concerned that the participant may start sending inappropriate pictures. In this situation there is not an identified health or safety risk rather than a request based on the fear of what could happen. In this case while there is a guardianship order the team cannot answer yes to first question which is that there is an imminent health or safety risk. Therefore, the team would not be able to add this as a restriction.

Health or safety risk is something that, without a restriction, can lead to the injury, death, or illness of a participant. The team must provide evidence of the substantial risk of injury, death, or illness for each restriction added to the IPC. The Division uses the Wyoming Statute 14-3-201(a)(ii)(D) definition of imminent danger - “a threatened harm and means a statement, overt act, condition or status which represents an immediate and substantial risk of sexual abuse or physical or mental injury.” The Division also uses the Wyoming Statute 14-3-201(a)(ii)(D) definition of substantial risk -

“a strong possibility as contrasted with a remote or insignificant possibility.”

PSS Review – Monitoring and Responsibilities

Ch. 45 Section 4(h)(iii)(A) (ii) For any rights restriction imposed, the following items shall be addressed and documented in the individualized plan of care as follows: (A) identify the specific and individualized assessed need	• Does section state how providers are expected to restrict right (check PBSP)?	Y	N
	• If not evident from this section, does the Needs and Risks section of the IPC include instructions for providers?	Y	N
	Is the individualized need specifically addressed including how the provider is expected to restrict this right?	Yes- go to 4 No – Cannot have the rights restriction; contact case manager and provide them with TA including reference to rule.	

- How will the team monitor this right?
- What are the provider responsibilities?

PSS Review Requirements: The PSS will look at the "How will the team monitor this right?" box on the Rights screen and will look for details explaining not only how the restriction will be monitored, but what the provider is expected to do.

Example: A participant has a diagnosis of diabetes and has a specific diet in place. An explanation for how the provider will assist with meal planning, grocery shopping, and how the provider will help them select healthy meals and snacks should be included. Explain how the provider will follow the guidelines as specified in the medical order.

Protocols should be included as necessary. Is the team assisting the participant in testing their blood glucose levels? If the levels are too high or too low, what is the provider expected to do? When will information be shared with the medical professional?

PSS Review - Previous Methods

Ch. 45 Section 4(h)(ii)(B) Document the positive interventions and supports used prior to any modifications to the individualized plan of care	• Does the IPC list less restrictive options that were used prior to the decision to restrict this right?	Y	N
	• Does the plan list any alternatives that have been tried recently?	Y	N
	Are there positive interventions AND supports that were used prior to this right restriction being added listed in the plan of care?	Yes – got to 5 No – Cannot have the rights restriction; contact case manager and provide them with TA including reference to rule.	

- Which previous methods have been tried unsuccessfully?

PSS Review Requirements: The PSS reviews the information in the "Which previous methods have been tried unsuccessfully?" box.

Example: Was there a diabetic consultation with a medical professional? Has the team tried to support the participant by redirecting, educating and making suggestions regarding appropriate choices for an individual with diabetes? If this was unsuccessful, did the team create a diabetic menu plan with the participant to ensure that the medical recommendations are being followed? Does the team provide the participant support when grocery shopping to encourage selection of foods as recommended in the medical order/protocol? Please note that having no previous methods in place does not fulfill this requirement. The team must provide evidence of something that has been tried in the past.

PSS Review - Less Restrictive Interventions

Ch. 45 Section 4(h)(iii)(C) Document less intrusive methods of meeting the need that have been tried but did not work	• Have alternatives been tried and are they listed here?	Y	N
	• Does this section describe what happened that made the team believe the alternatives were unsuccessful?	Y	N
	• Does the IPC describe how the provider has respected the participant's rights to respect and dignity?	Y	N
	Does the plan address less intrusive methods of meeting the participant's needs that have been tried, but that have not worked in the past?	Yes – go to 6 No – Cannot have rights restriction	

- Have less restrictive options been tried?
- Examples of **recent** less restrictive interventions.

PSS Review Requirements : The PSS reviews the information in the Rights screen and throughout the plan of care to ensure there are examples of **recent** less restrictive interventions prior to the restriction being implemented. Less intrusive interventions should be specific strategies that are positive and proactive, and are not reactive and consequence-based.

Example: Has the team provided participant preferred routines such as a specific day each week that grocery shopping takes place, which could reduce anxiety or fear? Has the team thought about possible triggers and how to avoid them insuring that healthy snacks are available, and meal preparation takes place so that the participant knows what to expect? Less intrusive methods may be changing the environment, providing education or redirecting. Is there a functional behavior analysis and positive behavior support plan in place and how often is it updated?

The team should build on the participant's unique strengths, interests, expectations, culture, and goals while respecting the rights and individuality of each person.

PSS Review - Proportionate Restriction

Ch. 45 Section 4(h)(ii)(D) Include a clear description of the condition that is directly proportionate to the specific assessed need	• Does the plan specifically describe the event/ preceding events that lead(s) to a restriction?	Y	N
	• Does the plan specifically list behaviors that warrant restriction	Y	N
	• Is the restriction proportionate to the condition?	Y	N
	• Is this restriction time-limited to a specific event or behavior?	Y	N
Does the plan specifically state the condition when a provider can issue this rights restriction?		Yes- go to 7 No – Cannot have the rights restriction; contact case manager and provide them with TA including reference to rule.	

- Is the condition proportionate to the restriction?

PSS Review Requirements: The PSS will review the Rights section to determine if the condition is proportionate to the restriction as explained in the “How and why is this right limited?” box.

Example: Staff does not give a participant with diabetes a choice of snack. This would not be proportionate to the health risk associated with diabetes as multiple healthy snack choices should be offered. The medical order/diabetes protocol and guidelines must be consistent throughout the entire plan of care. i.e.. Mealtime, Healthy Life Style, etc.

PSS Review - Data and Periodic Reviews

Ch. 45 Section(h)(ii)(E) Include regular collection and review of data to measure the ongoing effectiveness of the modification	Does the plan list evidence used to determine the effectiveness of this restriction (e.g. # internal incident reports before and after, daily schedules, etc.)	Y	N
	Does the plan provide criteria for when the team/ provider will restore the right or lessen the restriction	Y	N
	Is there a summary of how the information will be used to inform provider actions	Y	N
	Does the IPC include a plan for regular collection and review of data to measure the effectiveness of this rights restriction?	Yes – go to 8 No – Cannot have the rights restriction; contact case manager and provide them with TA including reference to rule.	
Ch. 45 Section(h)(ii)(F) Include established time limits for periodic reviews to determine if the modification is still necessary or can be terminated	Is there a time limit for review of this restriction - at least every 6 months.	Y	N
	Does the ICP state that the restriction can be reviewed as requested by participant and/or IPC team	Y	N
	Does the plan include time limits for periodic review to determine the necessity of the rights restriction?	Yes- go to 9 No – Cannot have the rights restriction; contact case manager and provide them with TA including reference to rule.	

- Does the documentation continue to necessitate the restriction?

PSS Review Requirements: The PSS reviews the information in the Rights screen to determine if the documentation provided continues to necessitate the restriction and to determine how often the team will review the continued need for a restriction.

Example: Are incidents being documented and tracked? Are blood sugar levels documented? Are the participants dietary choices being documented? How is the team documenting that the diabetes protocol is being followed? The team should review the data regularly to ensure health and safety needs are being met and to determine if the restriction is still necessary, or if the restriction can be lessened.

PSS Review - Informed Consent and Assurances

Ch. 45 Section(g)(ii)(G) Include the informed consent of the individual	• Verification form for participant without guardians	Y	N
	• Does the section address how provider will obtain consent/assent at time of restriction	Y	N
	• Does the plan describe how participant was involved in the decision to include the restriction in the IPC?	Y	N
Ch. 45 Section(g)(ii)(H) Include an assurance that interventions and supports will cause no harm to the individual	Does the plan include informed consent of the individual?	Yes- go to 10 No – Cannot have the rights restriction; contact case manager and provide them with TA including reference to rule.	
	• Does the IPC include a description of how the restriction will not cause physical harm.	Y	N
	• How will provider maintain dignity and respect?	Y	N
	Does the plan include an assurance that the interventions and supports for this rights restriction will cause no harm to the participant?	Yes – got to 11 No – Cannot have the rights restriction; contact case manager and provide them with TA including reference to rule.	

- Is participant being informed of these restrictions?
- Are restrictions being reviewed every 6 months or more often?

PSS Review Requirements: The PSS will look for information on the Rights screen demonstrating that the case manager fully informed the participant of the assessed need for the restriction and how it will be implemented. The case manager should discuss restrictions and restoration plans with the participant every six months or more often so providers and the participant and guardian can determine if the restriction is still needed or if revisions need to be made.

Example: The medical order should explain that the restriction will not cause harm. The PSS will review the "How the team will work to restore this right?" section to ensure there is a restoration plan, such as "After 6 months of meal planning and shopping together, the participant will be given the choice of meal planning independently" or another step down option that the team develops together.

PSS Review - Rights Restoration

Ch. 45 Section(h)(III) In addition to the items mentioned above, the individualized plan of care shall address how the team will work to restore any right described in this Section that has been limited or denied	• Does the IPC include a plan to lessen the restriction	Y	N
	• If lifelong restriction – does plan address how provider will maintain right to dignity?	Y	N
	• Does the IPC contain a plan to continuously evaluate restriction	Y	N
	Does the plan address how the team will work to restore the right?	Yes – Right restriction is allowed. No – Cannot have the rights restriction; contact case manager and provide them with TA including reference to rule.	

- Is there a plan to restore the participant's right?
- What is informed consent?

PSS Expectations: The PSS will be looking for a detailed plan to restore the participant's rights. The team must continually review whether the restriction can be lessened or removed over time. Include regular collection and review of data to measure the ongoing effectiveness of the restriction. The plan to restore the participants rights must be reviewed every 6 months.

Informed consent requires the team to furnish a participant with information sufficient to allow the participant to understand and give approval for the implementation of the plan of care and behavior support plan. Case managers have a duty to provide an explanation in terms that the participant can understand as it relates to the plan of care, and assist the participant with the decision-making process.

Capacity refers to a participant's ability to understand the significant benefits, and risks of receiving or not receiving waiver services. It is question- and decision-specific and should be documented relative to each decision. Capacity to consent should be assessed and documented by the team. A participant is presumed to have capacity to make a decision regarding their services.

Important note: Having an intellectual disability does not automatically preclude an individual from being able to give informed consent, nor does the lack of a guardian or conservator automatically mean an individual is capable of giving consent.

Consent must be given voluntarily: Allow sufficient time for the participant to understand, consider the information, and ask questions. If the participant requests additional information, provide a timely response. Consent must be related to a proposed treatment plan. The person obtaining consent should be knowledgeable and well-informed about the support needs of the participant and proposed services.

Consent must not be obtained through fraud, coercion, or misrepresentation.

In the event that the participant has a guardian, the same steps must be followed. If the participant does not consent but the guardian wishes to continue, then the case manager needs to note the steps that were taken to discuss the option with the participant, his or her response, and the guardian's

decision to move forward with the restriction."

Provider Support Review Requirements

- Reviews occur during a certification renewal visit, through incident reporting and complaint review.
- The expectation is that all providers will follow the plan of care and ensure provider compliance with Medicaid rules.
- Violations of Medicaid rules will be addressed directly with the provider at the time of discovery.
- Provider Support will offer technical assistance if rights violations are discovered during a review.
- The Division will require follow up, including a team meeting to rectify the area of concern.
- The Division will contact the case manager and provide further instructions regarding necessary changes to the individualized plan of care.

Rights restrictions may be reviewed by the Provider Support Staff (PVS) during a certification renewal visit, through incident reporting, complaints or other times the PVS reviews a participant's plan of care or the implementation of the plan of care by a provider. The expectation is that all providers will follow the plan of care as well as ensure they are in compliance with Medicaid rules during the provision of waiver services.

Should it be discovered that the rights of a participant or participants are being restricted in a manner that is not consistent with Chapter 45 Section 4 of the Department of Health's Medicaid Rules, this will be addressed directly with the provider at the time of discovery. Should it be determined that a rights restriction is being carried out in a manner that is not captured in the plan of care, or a rights restriction is in the plan of care but is not captured within the rights section of the IPC, the PVS who has made this discovery will provide technical assistance to the provider. At times, the technical assistance provided by the PVS will be in conjunction with the PSS assigned to the participant's case.

Further, follow up will be requested of the team to include a team meeting to ensure that this area of concern is rectified. Should this occur the case manager will be contacted either by the PVS or the PSS with further instruction regarding what needs to be done to ensure that the participant's plan accurately supports them while ensuring there are being protected as required.

Wrap Up

- Case managers are encouraged to share this tool with providers and the participant's team. It can be found on the Forms and Reference Library page of the Division website, under the *Tools* tab.
- Refer to Chapter 45 of the Department of Health's Medicaid Rules for more information about rights restrictions.
- Contact your assigned PSS if you have case specific questions regarding rights.

The division encourages all case managers to share this tool with providers and the participant's team. Please refer to Chapter 45 rule for more detailed information about rights restrictions. If you have any case specific questions regarding rights please contact your assigned PSS.

Case managers should ensure that any rights restrictions added to a plan comply with Chapter 45 rule before they submit a plan of care.

As always, it is the Division's expectation that any plan of care submitted by a case manager is complete and in compliance with all Medicaid Rules.

Once a plan is submitted, there is a possibility that the plan of care will be selected for a quality assurance review. If the PSS conducting the quality review identifies rights restrictions that do not comply with Medicaid Rules, the case manager will be required to modify the plan so that it is in compliance with Chapter 45, or they will be required to remove the rights restriction within seven business days. If a case manager does not make the necessary changes, that inaction could result in the Division taking corrective actions as outlined in Chapter 45, Section 29.

We always encourage you to contact your PSS if you have questions about a plan before

submitting the plan of care.

QUESTIONS?