

NEBRASKA DEPARTMENT OF HEALTH AND HUMAN SERVICES

GUIDANCE DOCUMENT

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Pursuant to
Neb. Rev. Stat. § 84-901.03

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Introduction

The instructions in this guide are for agency providers of Medicaid Home and Community-Based Services (HCBS) Developmental Disabilities (DD) Waiver services. This guide outlines current requirements for agency providers to submit their agency Human and Legal Rights Committee (HLRC) meeting information to the Department of Health and Human Services (DHHS) Division of Developmental Disabilities (DDD).

All Developmental Disability (DD) Waiver agency providers must establish an HLRC (404 NAC 4-002.05) to protect and promote participants rights. HLRCs help ensure that rights are not restricted without good reason and all rights restrictions receive due process.

HLRC Meeting Requirements

At a minimum, HLRCs must meet twice a year. The HLRC reviews situations where emergency safety interventions (ESI) were required, any supports and practices that restrict a participant’s rights, incidents where a violation of a participant's rights may have occurred, and all reported allegations of abuse, neglect, or exploitation (404 NAC 4-002.05).

Required Information Provided to HLRC Members

The following information must be provided to HLRC members so they can review and make informed decisions about rights restrictions:

- A description of the rights restriction, including when and how it will be used;
- The reason for the rights restriction, including the identified risk being addressed and how the rights restriction addresses the risk;
- A summary of what has been tried before to address the identified risk;
- A summary of the benefits and potential negative effects of the restrictive measure;
- Habilitation programs and other supports to reduce the need for rights restriction;
- Criteria set by the Individual Support Plan (ISP) team for reducing the rights restriction;
- ISP team approval for the rights restriction before use and semi-annually thereafter, as documented in the ISP;

- Written informed consent from the participant for the rights restriction; and
- At least six months of any relevant supporting documentation including, but not limited to:
 - Incident reports, daily logs, and other information showing the need for the restriction;
 - Habilitation program data, when available;
 - Physician contact forms for a restriction related to psychotropic medication or medical needs; and
 - The safety plan which includes the rights restriction.

In addition to rights restrictions, the provider's HLRC must review during their meetings: all Emergency Safety Interventions (ESI); incidents where a violation of a participant's rights may have occurred; and all reported allegations of abuse, neglect, or exploitation.

When a provider uses a sub-committee for reviews, documentation of the sub-committee activities must be provided to the HLRC and documented in the HLRC meeting minutes per 404 NAC 4-002.05(D).

Submitting Required Information in Therap

Agency provider HLRC information must be uploaded in the Therap case note questionnaire titled, "Human and Legal Rights Committee."

Providers may attach the forms and documents they currently use to provide the required information to their HLRCs. When a provider is already storing this information in Therap, they may indicate where the information is located in Therap.

All agencies must complete the case note questionnaire within 10 business days of their last HLRC committee meeting.

HLRC Review Type Definitions

The following types of reviews are completed by agency HLRCs or the subcommittees that report findings to the HLRC.


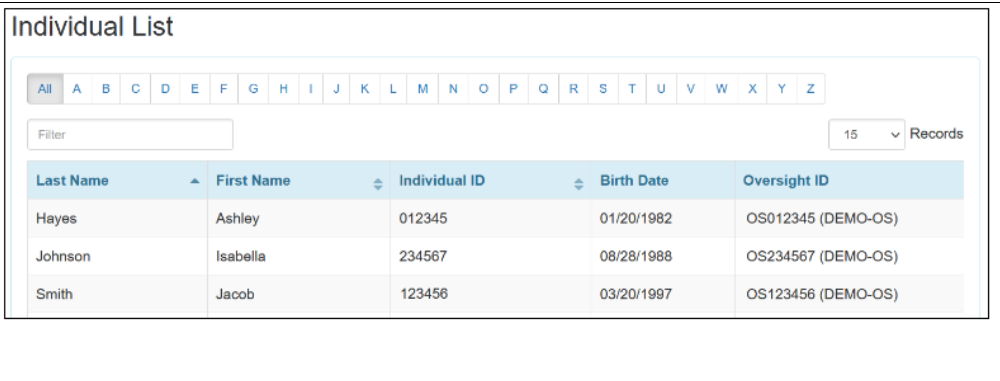

- **Abuse/Neglect/Exploitation (ANE) Investigation:** Review of an ANE allegation for a participant.
- **Annual:** Annual review of all restrictions in place for a participant.
- **ESI:** Review of any ESI used for a participant but not listed as a rights restriction in their ISP. All ESIs or restraints must be reviewed by the agency HLRC.
- **Increased Restriction:** A review of a restriction when the restrictive measures have been increased. Anytime an increase occurs, the restriction must be reviewed again by the HLRC.
- **Intake Into Services:** When a participant is new to a provider's services their restrictions must be reviewed. This pertains when participants are entering DD Waiver services and starting services with a provider or transitioning from services with another provider.
- **Interim:** A review of restrictions given interim approval between scheduled HLRC meetings.
- **New Restriction:** Any restrictions added to a participant's ISP must be reviewed by the HLRC during the next scheduled meeting.
- **Semi-Annual for Medications:** All restrictive medications must be reviewed semi-annually.
 - A medication is considered restrictive when it is a psychotropic medication that alters brain function and results in a change in the person's perception, mood, consciousness, or behavior.
 - When documentation from the prescribing physician is not available for ISP team review, or available documentation does not meet the required criteria, the psychotropic medication is a rights restriction (DD Policy Manual Section 3.7).

- **Other Review Type:** Other is only used when providers choose to review all restrictions more frequently than DDD policy requires or when there are no restrictions for an agency to review but they must hold an HLRC meeting per DDD policy.

Case Note Questionnaire

The following are step-by-step instructions on entering and completing the case note questionnaire.

Creating a Case Note

<p>Option 1 for Starting a Case Note:</p> <p>Select New under the “Case Note” section.</p>	
<p>Select the participant from the “Individual List.”</p>	
<p>Option 2 for Starting a Case Note:</p> <p>On the Individual Home Page, under “Modules” on the left side, select New under the “Case Note” section.</p>	

The **Service Date** will be the date the provider enters the case note questionnaire.

Select the "Human and Legal Rights Committee" template.

New Case Note

Select Date and Template

* Service Date

* Select Template

Back Next

Existing Case Note(s)

Individual

No existing Case Note(s)

- Please Select -
- Additional Service Review / DDD-NE
- Clinical Activity - Consultation V2 5-22 / DDD-NE
- Clinical Activity - Observation / DDD-NE
- Clinical Activity-FBA/BSP / DDD-NE
- Clinical Activity-Training / DDD-NE
- Continuous Residential Habilitation Walk-Through Service Review / DDD-NE
- Day Service Quarterly Review 1.0 / DDD-NE
- General Event Report (GER) Follow-up Service Review / DDD-NE
- Human and Legal Rights Committee V.3 / DDD-NE**
- Residential Service Quarterly Review 1.0 / DDD-NE
- Risk Clinician Monthly Review v1.0 / DDD-NE
- SLP Home Study / DDD-NE

10 Records

Select the Activity Type: "Provider: Human and Legal Rights Committee."

Template: Human and Legal Rights Committee V.2

Case Note Details

Individual ⓘ

* Service Provider

Service Date 01/25/2024

* Activity Type

* Questionnaire

- Please Select -
- Provider: Human and Legal Rights Committee**
- DDD or Liberty Healthcare Follow-Up

Human and Legal Rights Committee V.3

No Question Answered

Open

To open the questionnaire, click the blue **Open** button in the lower right corner.

* Service Provider

Service Date 02/06/2024

* Activity Type


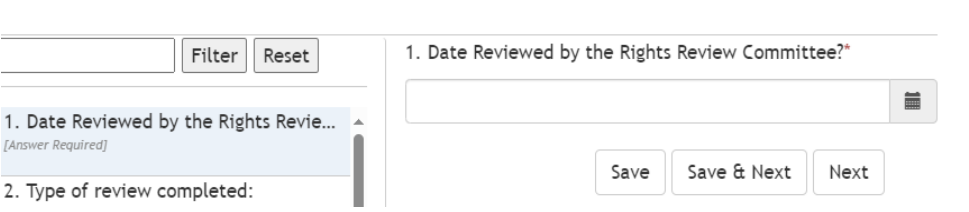
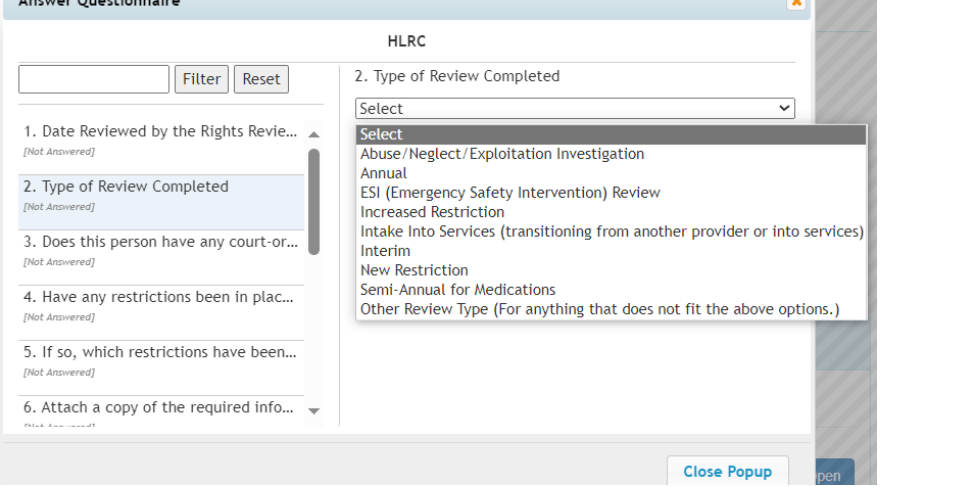
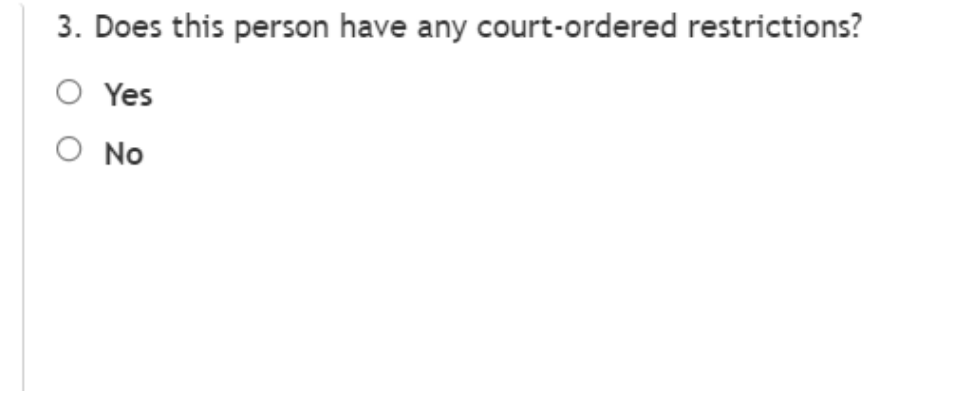
* Questionnaire

Human and Legal Rights Committee V.3

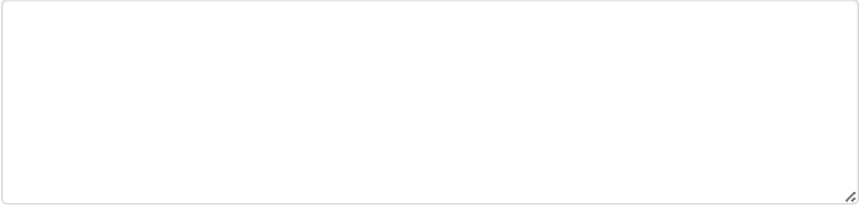
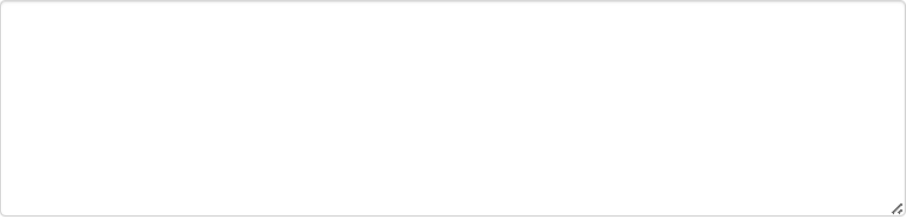
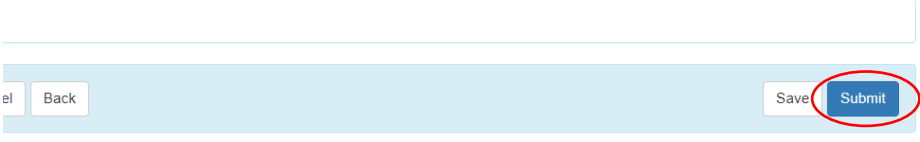
No Question Answered

Open

Human and Legal Rights Questionnaire Template

<p>The questionnaire pop-up will appear with 8 questions.</p> <p>Questions 1 and 2 must be answered before the questionnaire can be saved and the case note submitted.</p> <p>These questions have a red asterisk * as a reminder that they are required.</p>	
<p>1. Date Reviewed by the HLRC</p> <p>Enter the date the committee reviewed the documents and rights restrictions.</p>	
<p>2. Type of Review</p> <p>Select the type of review that was completed for the participant.</p> <p>For definitions of review types, see HLRC Review Types earlier in this guide.</p>	
<p>3. Court-Ordered Restrictions</p> <p>Select Yes or No. This only pertains to restrictive items ordered by a judge. It does not pertain to guardianship, payees, conservatorships, etc.</p> <p><i>Example: A judge orders a person to not have access to specific establishments.</i></p>	

<p>4. Restrictions in place five years or longer</p> <p>Answer for the restrictions pertaining to the recent committee review. <i>This is used for possible referrals to the HLRAC.</i></p> <p>N/A used when the review type is for ANE allegations, ESI or restraint reviews, or reviews of prohibited practice events.</p> <p>If unknown, work with the Service Coordinator to determine length. If unable to determine, answer No.</p>	<p>4. Have any restrictions been in place five years or longer?</p> <p><i>Hints: This is answered for the restrictions that pertain to this review</i> ...</p> <p><input type="radio"/> Yes</p> <p><input type="radio"/> No</p> <p><input type="radio"/> N/A (Utilized for ANE, ESI, or Prohibited practice reviews by the committee.)</p>
<p>5. Which Restrictions in Place Five Years or Longer</p> <p>List restrictions in place longer than five years and part of the recent committee review.</p>	<p>5. If so, which restrictions have been in in place five years or longer?</p> <div style="border: 1px solid gray; height: 100px; width: 100%;"></div>
<p>6. Information Provided to the HLRC For Review</p> <p>Items pertaining to the review can be checked and either attached to the main case note or Box 7 can detail where to find the information in Therap.</p>	<p>6. Please check all the items that are attached to this case note and attach to the case note or indicate in box 7 where the information is located in Therap if not attached.</p> <p><i>Hints: Per requirements of the DDD Policy Manual in Section 3.4</i></p> <p><input type="checkbox"/> A copy of the required information provided to the committee for each restriction reviewed: description, reason, what was previously tried, benefits vs. potential negative effects, programs and supports to reduce the need for the restriction, reduction plan, ISP team approval, written informed consent from the participant, & at least 6 months of supporting documentation.</p> <p><input type="checkbox"/> Documentation showing the committee, or a subcommittee reviewed all use of restraints or ESIs. (Per requirements of the DDD Policy Manual in Chapter 7.2, section K)</p> <p><input type="checkbox"/> Documentation showing the committee, or a subcommittee reviewed all incidents in which a violation of a participant’s rights may have occurred. (Per requirements of the DDD Policy Manual in Chapter 7.2, section K)</p> <p><input type="checkbox"/> All reported allegations of abuse, neglect, or exploitation. (Per requirements of the DDD Policy Manual in Chapter 7.2, section K)</p> <p><input type="checkbox"/> Discussion notes, voting records, etc.</p>

<p>7. Comment Box</p> <p>Used to indicate where items are in Therap or the reason something is unavailable.</p> <p>Document requests will not be completed for missing items. It will be assumed they are not available.</p>	<p>7. Please use this section to notate the location of documents in Therap if not attached or the reason something is unavailable. If an item is not attached and there is no documented reason why, it will be assumed the item is unavailable.</p> 
<p>8. Comments or Updates</p> <p>This additional box can be used to share other pertinent information or updates.</p> <p><i>Example: A restriction was approved on an interim basis and since the meeting, the restriction is no longer needed.</i></p>	<p>8. Comments or updates from provider.</p> <p><i>Hints: Can be used to indicate if a restriction was temporary while obta</i> ...</p> 
<p>9. Case Note Completion</p> <p>After all information is entered, click the blue Submit button to complete the case note submission.</p>	

Reviews

Review Process

The Liberty Healthcare Human and Legal Rights (HLR) Coordinator completes reviews of case note questionnaires and submitted documentation to ensure all requirements are met per DDD policy, state laws, and regulations.

Referral Process

When there is a concern with compliance with policy and regulations or case notes submitted with missing information, the case is referred to DDD Quality for further review.

Liberty Healthcare may refer cases after their review to the Human and Legal Rights Advisory Committee (HLRAC). Cases may be referred to the HLRAC when:

- Non-medication restrictions in place for 5 years or longer with little to no change;
- There are five or more restrictions in place;
- The reduction plan requires more than 6 months for measurable criteria and/or zero target behavior occurrence;
- Documentation of previously tried methods before implementing the restriction has 3 or fewer alternative methods listed; or
- The supports in place are not teaching the skills to reduce the restriction.

ISP teams can make referrals to the HLRAC for review and recommendations on how to best support a participant and reduce the use of restrictions over time. These are submitted via Therap SComm to “HLRCReferrals.”

Appendix A: Definitions

Behavior Support Plan: A type of habilitation program based on a behavioral assessment, which teaches an appropriate replacement behavior and decreases problem behavior.

Emergency Safety Intervention (ESI): Use of physical restraint or separation as an immediate response to an emergency safety situation.

Habilitation Program: A structured method for teaching skills that have goals and data collection.

Individual Support Plan (ISP): A plan of services, supports, activities, and resources based on the participant's personal goals and preferences, and assessments of strengths and needs.

Individual Support Planning (ISP) Team: The people who support a participant to develop and carry out the ISP. Members include the participant, their guardian, Service Coordinator, developmental disabilities providers, and others chosen by the participant.

Nebraska Administrative Code (NAC): Nebraska state regulations.

Participant: The person receiving Medicaid HCBS DD Waiver services and any person legally authorized to act on behalf of the participant.

Prohibited Practice: An intervention that is prohibited by the Division of Developmental Disabilities because the intervention excessively restricts the rights of participants or increases the risk of negative outcomes. Prohibited practices listed in the DD Policy Manual:

- **Mechanical Restraint** - Any device, material, object, or equipment that restricts freedom of movement or normal access to the body, except:
 1. The use of acceptable and age-appropriate child safety products, such as a car seat or booster seat.
 2. Use of car safety systems, such as seatbelts or wheelchair tie-down straps.
 3. Equipment ordered by a physician or health care provider for the participant's safety, such as a lap belt on a wheelchair.
- **Physical restraint, except when used as an emergency safety intervention** – A physical hold that restricts, or is meant to restrict, a participant's voluntary movement.
- **Chemical restraint** – A drug used for discipline or convenience and is not required to treat any medical symptoms.
- **Seclusion** – Confining a participant alone in an area and physically preventing them from leaving or having contact with other people.
- **Aversive stimuli** – A procedure to change unwanted behavior that is painful, frightening, or potentially harmful to the participant's health and safety.
- **Corporal punishment** – Causing pain as a consequence for a behavior.
- **Verbal abuse** – Use of oral, written, or gestured language that intentionally uses offensive terms toward a participant.
- **Physical abuse** – Act of violence or physical force that causes bodily harm.
- **Emotional abuse** – Humiliation, harassment, threats, or intimidation causing distress.
- **Denial of basic needs** – Withholding access to food or water, clothing, shelter, and treatment for physical needs.
- **Discipline** – Use of punishment to correct undesired behavior.

Rights Restriction: A support or practice limiting a participant's rights.

Safety Plan: A guide for the people providing direct support, which includes:

1. A summary of all identified risks, triggers, and warning signs.
2. A detailed description of all the supports, strategies, and equipment used to address the identified risks.
3. Specific instructions for when and how to use all the supports, strategies, and equipment being used.