

Participant Rights and Restrictions

Rights Restrictions

A person with a developmental disability has the same legal, human, and civil rights and freedoms guaranteed to all citizens. People do not give up their rights when they accept services from the Division of Developmental Disabilities or other state programs. The Home and Community-Based Services (HCBS) Final Settings Rule states that individuals receiving Medicaid HCBS services must have rights comparable to those not receiving services.

A rights restriction is any limitation, intervention, or control imposed to prevent an individual from exercising a legal or personal right, even when intended to protect their safety or well-being.

- A. State Guidance on participant rights and rights restrictions can be found in the following areas:
 - 1. Nebraska HCBS Provider Policy Manual Chapter 3: Participant Rights and Restrictions
 - 2. Titles 403 and 404 of the Nebraska Administrative Code (NAC)
- B. Participant rights include, but are not limited to:
 - 1. Freedom of movement;
 - 2. Access to personal property;
 - 3. Choice of daily living (such as meals, clothing, and activities);
 - 4. Freedom from restraint;
 - 5. Right to privacy;
 - 6. Right to access public spaces; and
 - 7. Right to access and control one's own possessions and money.
- C. DD Services Providers play an important role in ensuring participant rights. Providers are expected to:
 - 1. Presume competency
 - a. All individuals are presumed capable of making their own decisions unless legally determined otherwise.
 - 2. Avoid unnecessary restrictions
 - a. Rights may not be restricted as a matter of convenience, staff preference, or due to general policy.
 - 3. Document and justify restrictions
 - a. Clearly documented;
 - b. Justified by assessed need;
 - c. Time-limited; and
 - d. Reviewed and approved by the provider agency's Human Legal Rights Committee (HLRC).
 - 4. Use the least restrictive alternative
 - a. Before implementing a restriction, explore all less-intrusive strategies.
 - 5. Include the participant in the decision-making

- a. The participant and guardian must be involved in planning, informed about the restriction, and given the chance to appeal or request changes.
 - b. When the participant does not have a guardian, they will choose their supports in the PCP meeting.
- 6. Create a plan for the reduction of the restriction
 - a. Every rights restriction must include a plan to reduce or eliminate the restriction over time.
- D. The following documentation is required in the Person-Centered Plan (PCP) when a restriction is put in effect:
 - 1. Description of the specific right being restricted;
 - 2. Purpose of the restriction (such as safety concern or behavioral issue);
 - 3. Evidence supporting the need;
 - 4. Least restrictive alternatives attempted;
 - 5. Plan for teaching and supporting the participant;
 - 6. Data collection procedures; and
 - 7. Frequency of review.
 - a. Prior to implementation;
 - b. Annually for non-psychotropic medication restrictions; and
 - c. Semi-annually for psychotropic medication restrictions.

Examples of Rights Restrictions

The following list is **not** an exhaustive list of rights restrictions.

Situation	Potential Rights Affected
Locked refrigerator or pantry	Right to access food
Limiting access to the phone or the internet	Right to communication and privacy
Restricted funds or controlled spending	Right to manage own money
Physical restraint during a behavioral incident	Freedom from restraint
Room search or removal of personal items	Right to privacy and property
Choice of roommates or home decor	Right to autonomy in living space
Physician prescribes psychotropic medication to address aggression	Right to autonomy
Bed rails	Right to voluntary movement
A safety protocol in which a participant is not permitted to access the community for a set period of time after a behavioral incident	Limit to community access
Staff following a medical order (such as fluid or calorie restriction)	Right to autonomy and to make one's own medical decisions
Alarms or locks on doors	Rights to common areas or community access

For additional information or questions, contact the participant's Service Coordinator or the Nebraska DDD office for guidance on right restrictions and compliance: **Nebraska DHHS-Division of Developmental Disabilities**.

Phone: (402) 471-8501

Email: dhhs.DDDCommunityBasedServices@nebraska.gov