Home and Community-Based Services

HCBS 101:
What HCBS means for people in Oregon

Home and Community-Based Services (HCBS) rules support people to live in the community

The following HCBS 101 presentation is intended to provide an overview of:

- Federal Medicaid Home and Community-Based Services (HCBS) regulations
- Oregon Developmental Disabilities Services HCBS requirements

Brief History Lesson

Services for people with disabilities were only offered in institutions

- People were isolated from their community
- Lives were completely controlled by the institution

Oregon Transitions to Community-Based Supports

- Oregon gets a waiver to use Medicaid funding to support people in community homes
- Oregon closes institutions for people with I/DD

Centers for Medicare and Medicaid Services (CMS) issues HCBS regulations

- Regulations provide protections to ensure personal freedoms
- States must be in full compliance to receive Medicaid funding

Services for people with intellectual and developmental disabilities in Oregon are HCBS Medicaid funded

This means Oregon receives funding from the Federal government to pay for services

(In many cases this is nearly 70% of service funding!)

Oregon has to follow Federal rules

The Medicaid HCBS rules are just like Oregon rules:

Including supporting people to:

- Have choice
- Have self-direction
- Be treated with dignity and respect

Medicaid CFR 441.530 = OAR 411-004

Want to know a secret?

The "new" HCBS regulations aren't really that new or different than how things were already being done in Oregon!

Person-Centered Service planning was already in place

Individual's basic rights are protected in statute and Oregon Administrative rule

Services are voluntary and should reflect the choices of the individual

Live in neighborhoods

Work in businesses

Have fun in the community

HCBS simply means people live in the community and have lives like everyone else!

People have a choice in where they live, including a non-disability specific setting

People have a choice in who provides support

People have a choice to work in community integrated settings

People have a choice in where they live and receive support

Support planning should:

Focus on opportunities for community experiences and integration, like getting a community job.

Reflect what is important to and for people.

Person-centered planning helps identify support for people to live the lives they want.

People should be helped in ways they need to do the things they want.

People are protected from being isolated

This means people are given the opportunity to be involved in the community

People are not supported in institution-like settings

People are not secluded from other people

People are not limited to interacting with only other people with disabilities

People are free from coercion and restraint

This means people are not forced to make decisions by being threatened

People's freedom of movement is not restricted by other people

People who live in a home that is operated, owned, or controlled by the provider must be provided with a Residency Agreement.

The Residency Agreement provides the individual with information about:

- When they can be asked to move out,
- Hearing rights to appeal a notice of exit, and
- Policies of the provider

When people live in a setting that a provider owns, controls, or operates, people have protected freedoms, including:

Control of Schedule and Activities

Visitors at Any Time

Lock on Bedroom Door

Freedom to Furnish and Decorate Bedroom

Choice in Bedroom Roommate

Access to Personal Food at Any Time

Sometimes people need limits on freedoms in order to be safe…

When a person living in a residential settings needs a restriction on the following freedoms:

- Visitors at Any Time
- Control of Personal Schedule and Activities
- Choice in Bedroom Roommate
- Freedom to Furnish or Decorate Bedroom
- Lock on Bedroom Door
- Access to Personal Food at Any Time

…then an Individually-Based Limitation (IBL) is needed

Individually-Based Limitations

An Individually-Based Limitation is required when a provider has to <u>impose</u> a <u>restriction</u> on an individual's residential setting freedoms

Sometimes people need to have restraints in their plan to help them be safe

Safeguarding Interventions are hands-on restraints and can only be used in emergency situations

Safeguarding Equipment is an item that has restraining qualities and might be used to protect someone or to help treat a medical condition

When a person's ISP includes an Individually-Based Limitation, including a restraint, there are documentation requirements.

An IBL documents:

- The reason for the limitation;
- A description of the limitation;
- What other alternatives have been tried and didn't work;
- A plan for monitoring the limitation; and
- The person's consent to have the limitation be a part of planned supports

If there is an emergency…

People who provide help can intervene and restrain someone to keep them out of harm from imminent danger

People cannot use their bodies to restrain people when there is not an emergency or if there is a better way to stop danger

Services Coordinators and Personal Agents help people and their families to understand the HCBS rules.

People will also get help to create plans that follow the new rules.

People should always be treated with dignity and respect.

Plans should always be person-centered.

For questions about HCBS

You can find more information at the HCBS website:
http://www.oregon.gov/dhs/seniors-disabilities/HCBS/Pages/Resources-Oregon.aspx

Or email:
Rose.K.Herrera@state.or.us
ODDSHCBS.Assistance@state.or.us

Common Questions

Are the HCBS regulations fully in effect in Oregon?

- Yes, ODDS has adopted the standards in the Federal Medicaid HCBS regulations into Oregon Administrative Rule. ODDS expects plans, services, and settings to meet the HCBS rule requirements.
- OAR 411-004: Home and Community-Based Services and Settings and Person-Centered Service Planning.

How and where are IBLs documented?

- IBLs are documented on the Department-approved "Consent to IBLs" form. The completed form is then attached to the individual's ISP and becomes part of the ISP.
- The form is available on-line on the Oregon ODDS HCBS webpage: https://www.oregon.gov/DHS/SENIORS-DISABILITIES/HCBS/Pages/ODDS.aspx.

Do the HCBS rules apply to individuals in "In-Home" settings?

- Yes, all people who receive Medicaid-funded HCBS services are protected by the HCBS regulations.
- The Residential Settings freedoms are specific to individuals who live in a home or setting operated, owned, or controlled by their licensed, certified, or endorsed provider.
- It is presumed that individuals in their own private homes have choice and direction over their lives in these settings.

Which IBLs apply to people in "In-Home Settings"?

- The only IBLs that are valid for individuals living in their own private homes (including with family) are IBLs that consent to restraints (Safeguarding Interventions or Safeguarding Equipment) in the individual's plan for support.

What are the expectations around "access to personal food at any time"?

- Individuals must be supported to acquire, store, and have access to foods that the individual uses their own resources to acquire– this is "personal food".
- Providers must support individuals in accordance with individual needs and preferences.
- Individuals must have a place to store their food that they can access without needing permission from others.
- Providers are responsible for providing three nutritious meals and two snacks per day. Food beyond this amount is the responsibility of the individual.
- Providers may secure or control household food supplies that are intended for the provision of meals and snacks.
- Menus and foods served in the household should honor the culture, preferences, and dietary needs of the individuals in the household.
- Providers need to offer flexible mealtimes to individuals and reasonable alternatives to meal and snacks when requested by the individual.

What are responsibilities and expectations related to "visitors at any time"?

- The individual may choose to have the guests of their choosing at any time.
- Providers may (and should) ask visitors to identify themselves.
- Visitors who present a safety risk or are disruptive to the household may be asked to leave.
- Adult individuals may have overnight guests and providers can ask for a heads up prior to the visitor staying. Providers may also have expectations around number of overnight visits addressed in the Residency Agreement.
- Providers are not responsible for feeding, care, or sleeping accommodations for guests to the home.
- Visitors are intended to be guests who visit the home for times in limited duration.

What are expectations related to a "locking bedroom door"?

- All bedroom doors of bedrooms assigned to adult individuals in a residential setting must have a lock in place.
- Locks must be single-action release, meaning that the lock disengages by a singular motion, such as pressure on the door handle. Individuals must not be able to be locked into their bedrooms.
- "Locks" may be traditional locks that utilize a key, but also may use a combination pad, key card, or other measure to ensure secure access.
- Individuals may not opt out of having a lock on their bedroom door, but may choose not to use the locking feature.
- Only the provider or appropriate staff, in addition to the individual, may have access to the key.
- Providers may use a "skeleton key" or master key for the locks, but each individual must have a unique key or combination for their door lock to ensure access by other residents is limited.

What are responsibilities and expectations related to "control of schedule and activities"?

- Individuals should be supported to self-direct their lives, including daily activities.
- Providers need to provide a reasonable and timely response to an individual's desire to engage in activities. This does not mean the activity happens instantaneously, but that the individual's desire for an activity is acknowledged and the individual is supported in identifying what may need to be in place for the activity to occur and when this may happen.
- It is not considered a restriction or limitation when individuals are identified as needing supervision support to engage in an activity.
- Providers do not need to (and should not) support or permit illegal activities.
- Individuals have the right to dignity of risk, but should still be supported in the decision-making process and provider's have a responsibility to mitigate risk whenever possible.

"Abandoning people to choice is also a form of neglect."
-Mary Lou Bourne

What are responsibilities and expectations related to "freedom to furnish and decorate"?

- Individuals' bedroom/personal space should reflect their personal style and tastes.
- Providers of foster care and 24-hour residential settings are required to provide basic furnishings, however, individuals are permitted to bring their own furnishings, should they so choose.
- Providers may have expectations related to safety and hygiene, including policies about keeping exits clear, prohibiting water beds, and requiring the bedroom to be free of sanitation hazards.
- Providers may have policies in the Residency Agreement that are consistent with community rental agreements that limit modification of the physical environment, such as painting, nails or structural changes of the space.

What are expectations related to "choice in bedroom roommate"?

- Individuals have a say in who they share a bedroom with- individuals should be included in the decision to accept a new roommate.
- Providers have the ultimate decision in whether to admit or exit a person into the home.
- When an individual accepts a placement in a setting under the designation of a shared bedroom, the individual must reasonably cooperate with the process of acquiring a new roommate.
- Individuals who no longer desire to share a bedroom may be supported by their team in identifying choices for residency.

How do HCBS residential protections apply to children in foster care or 24-hour homes?

- Providers may act in a parental role to provide structure and expectations for minor children in their care. This is considered a "reasonable, prudent parenting" standard.
- Providers are expected to have limits and structure similar to how other children living in the community would be raised.
- Providers are expected to collaborate with the child's ISP team, including the parent or guardian, to identify what may be reasonable or appropriate for each child.
- Only those limitations that are imposed by the provider that are significantly more restrictive than typical community parenting structure for a child of the same age are considered to be an IBL.
- Any use of restraints are considered an IBL. Restraints must be consented to by the child's parent or guardian and meet all of the requirements for an IBL.
- A parent or guardian may not direct care or support that is not compliant with HCBS regulations.

HCBS & Kids in Residential Settings

Access to food at any time means kids are able to have some snacks or personal food in the home. The provider will help identify what and when it is appropriate for the child to have access to the snacks.

Visitors at any time means that the child's parent/guardian has access to the child, as well as the child's attorney and CASA. Children should be able to entertain guests in the home at reasonable times and frequencies.

Locks on bedroom doors means that teams will consider whether a lock is appropriate for the child based on the child's unique needs. This is documented in the ISP and locks must be single action. No IBL is needed if a lock is not appropriate for the child.

HCBS & Kids in Residential Settings

Choice in bedroom roommate means that the child and the child's parent or guardian are involved in the process of choosing a new roommate, should the child live in a shared bedroom situation. The child's parent or guardian will determine consent to the roommate.

Freedom to decorate and furnish the bedroom means that the child should be able to have a bedroom space that reflects their personal style and interests. Providers and parents/guardians can have structure related to content appropriateness and safety.

Control of personal schedule and activities means that the child should have preferred activities as part of their routine as appropriate. Providers are responsible to ensure that specific activities take place (regardless of preference of the child) such as school attendance, adequate sleep time, physical activity, health care and hygiene tasks.