PRESENTATION

# HCBS: Current Status and Upcoming Individually-Based Limitations (IBL)

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DHS APD Long-Term Services & Supports
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# Overview

- HCBS Requirements
- Current Status based on NCI-AD
- Individually Based Limitations

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# HCBS Overview

- Establishes requirements for the qualities of settings where individuals receive Medicaid HCBS services
- Focus on the quality of individuals' experiences
- The intent is that individuals receiving HCBS have the opportunity to receive services in a manner that protects their choice, dignity and promotes their integration into their community

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# HCBS Overview - Rights

- The basic requirements are:
  - The setting is integrated in and supports full access to the greater community;
  - Is selected by the individual from among setting options;
  - Ensures individual rights of privacy, dignity and respect, and freedom from coercion and restraint;
  - Optimizes autonomy and independence in making life choices; and
  - Facilitates choice regarding services and who provides them.

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# HCBS Overview - Rights

- If the individual lives in a provider-owned or controlled setting the individual has the following additional rights:
  - Has a lease or other legally enforceable agreement;
  - Has privacy in their unit including:
    - lockable doors,
    - choice of roommates and
    - freedom to furnish or decorate the unit;
  - Controls his/her own schedule including access to food at any time;
  - Can have visitors at any time; and
  - The setting is physically accessible.

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# HCBS Overview

- States needed to submit a transition plan to bring all providers into compliance
  - Oregon received approval for our Transition Plan on February 27, 2019.
- Final deadline for state compliance is March 17, 2022.
- Provider deadline is 6 months before that date.

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# HCBS Compliance Timeline

**IBL Training**

**03/01/19 - 06/30/19**

**IBL Rollout**

**07/01/19 - 06/30/20**

***Technical Assistance for IBLs; Corrective Action for all other HCBS rules***

**HCBS Onsite Compliance Reviews 07/01/20 - 06/30/21**

***Corrective Actions for all HCBS rules, including IBLs***

**Non-Compliant Provider Closures 07/01/21 - 03/17/22**

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Non-Regulatory Indicators

# NATIONAL CORE INDICATORS FOR AGING AND PEOPLE WITH DISABILITIES

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# National Core Indicators

- APD surveys Medicaid LTSS consumers about their experience receiving services.
- Some of the questions focus on HCBS requirements

- So how are we doing?

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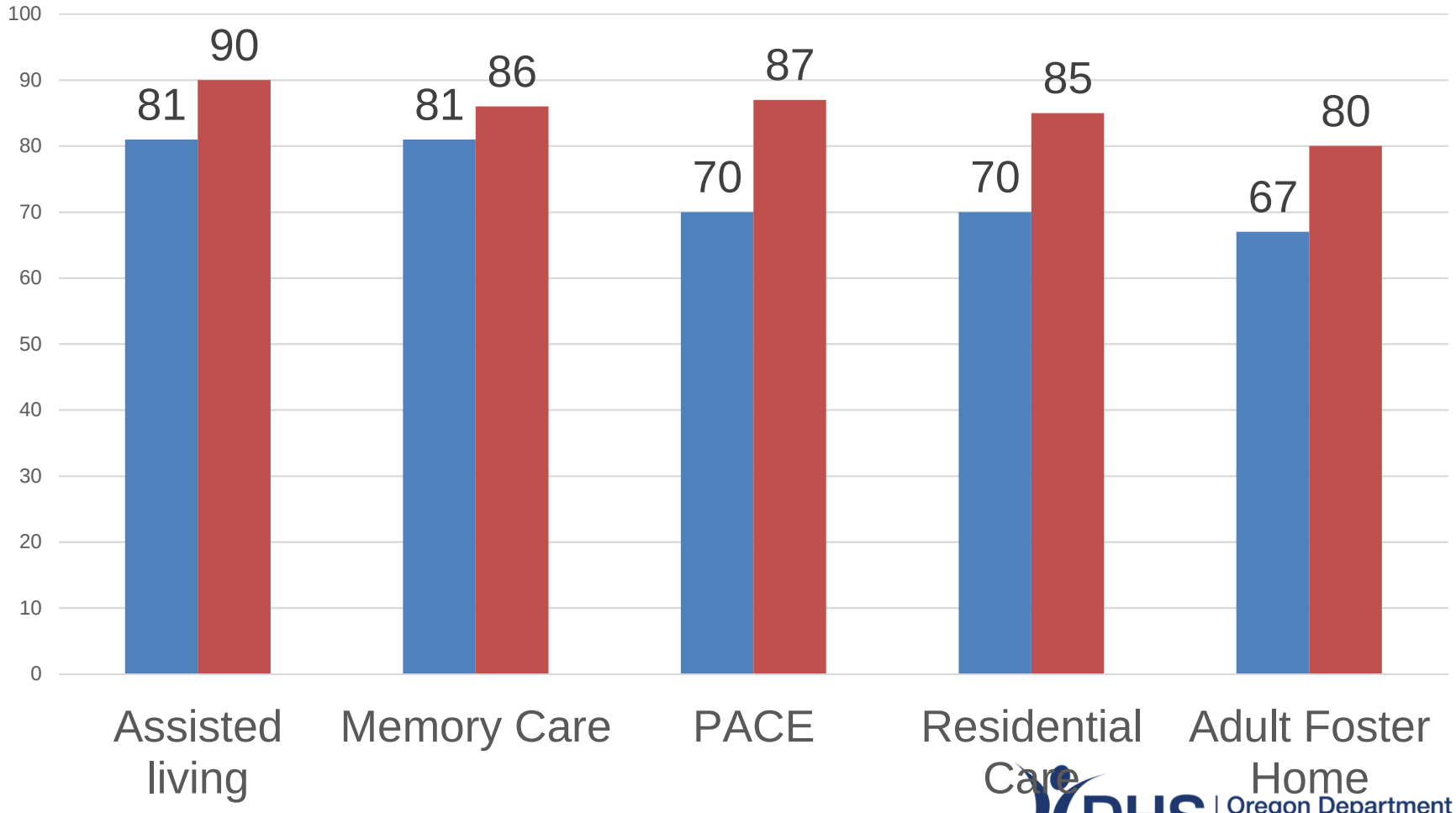
# Able to Decorate and Furnish

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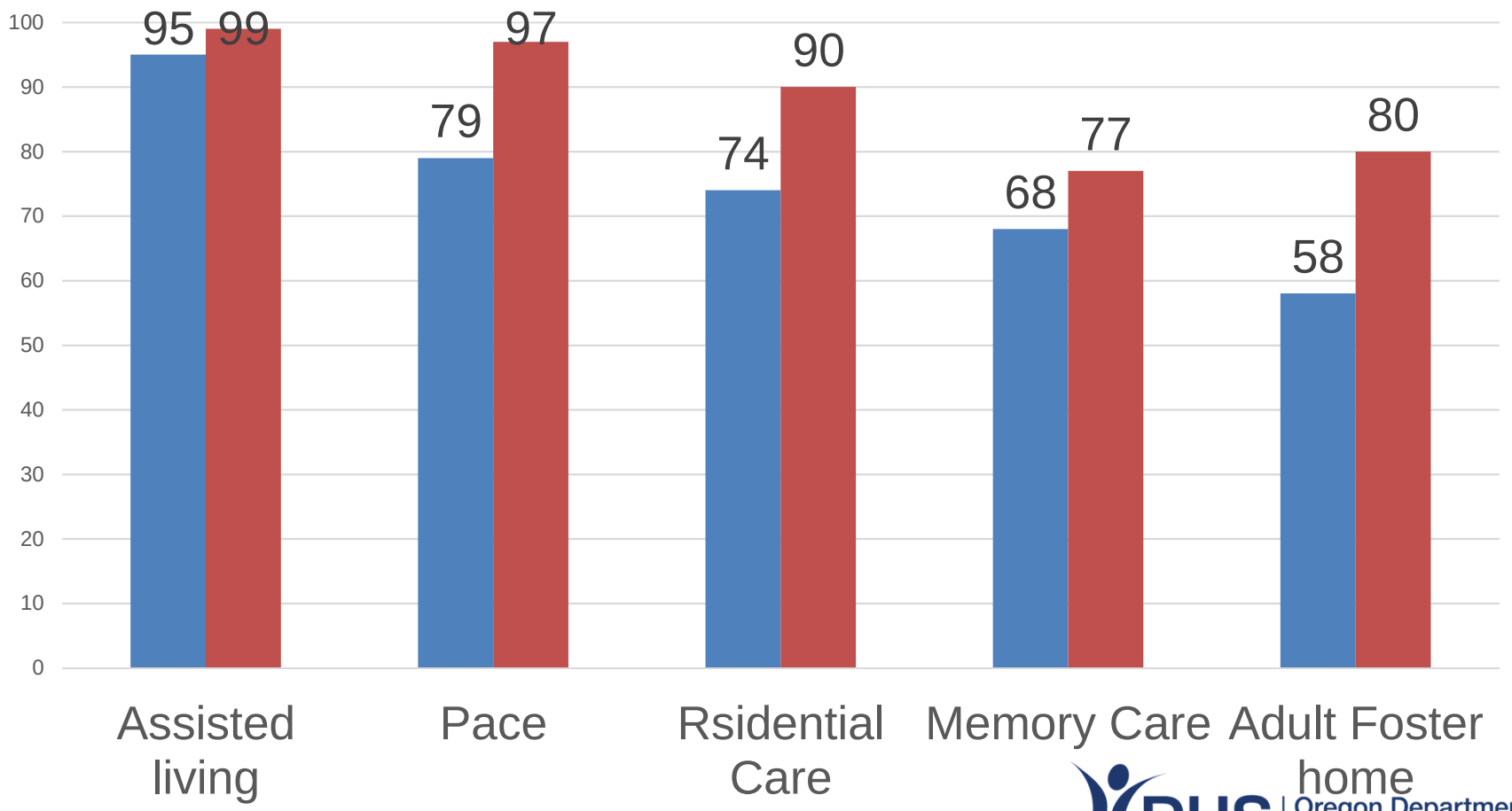
# Able to lock doors for privacy

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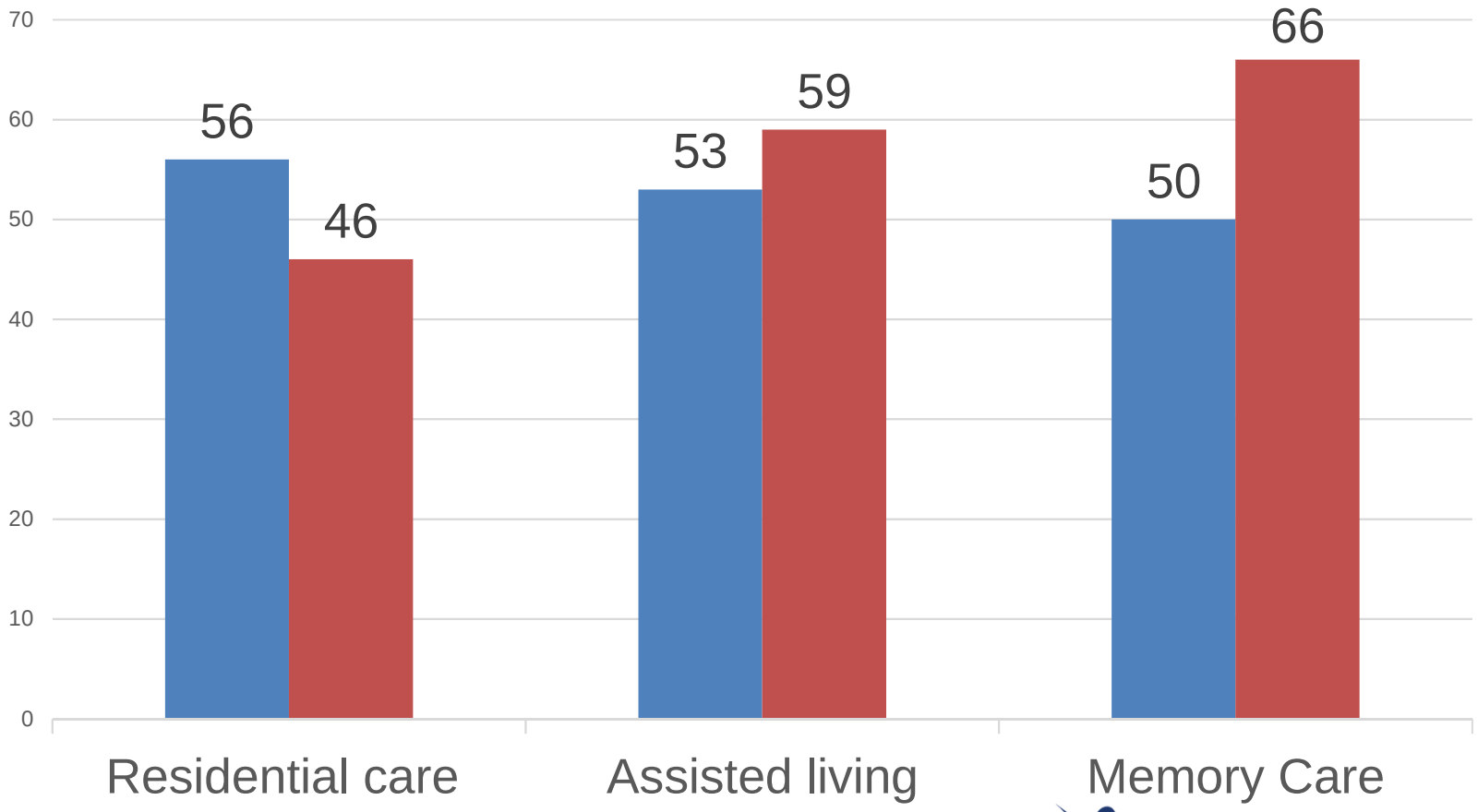
# Active in community as would like to be

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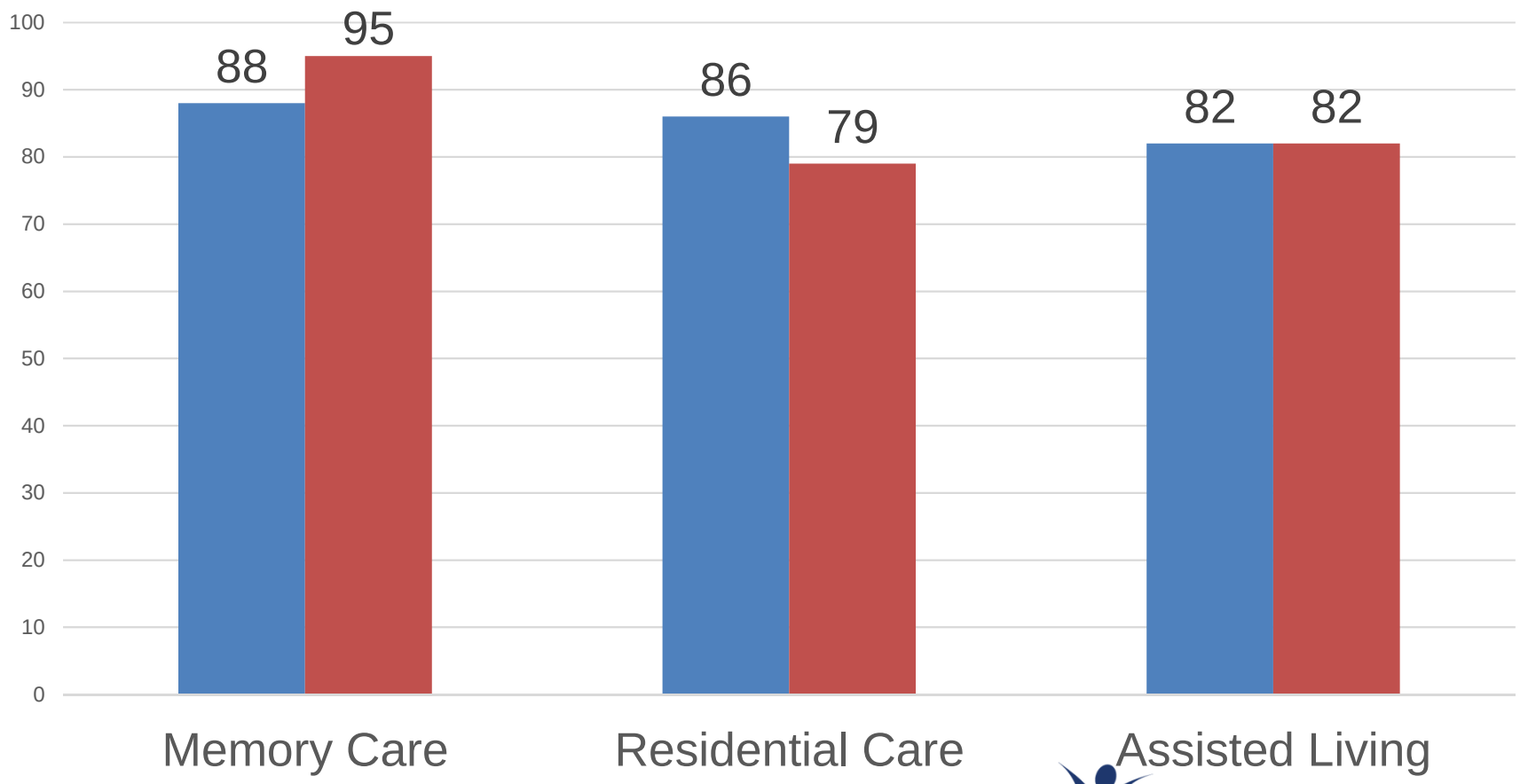
# Access to food at all times of the day

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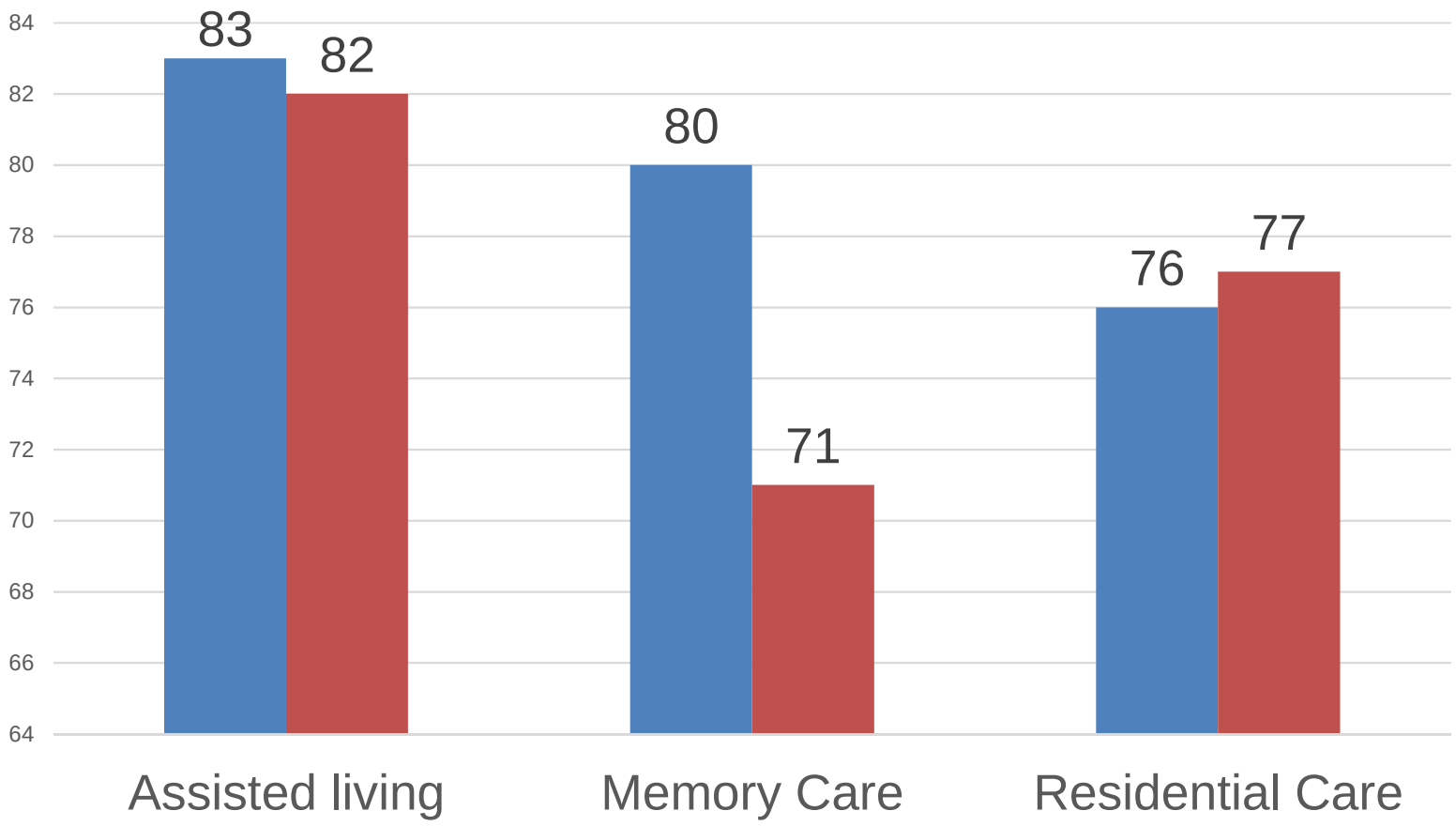
# Visitors: See or talk to friends when they want

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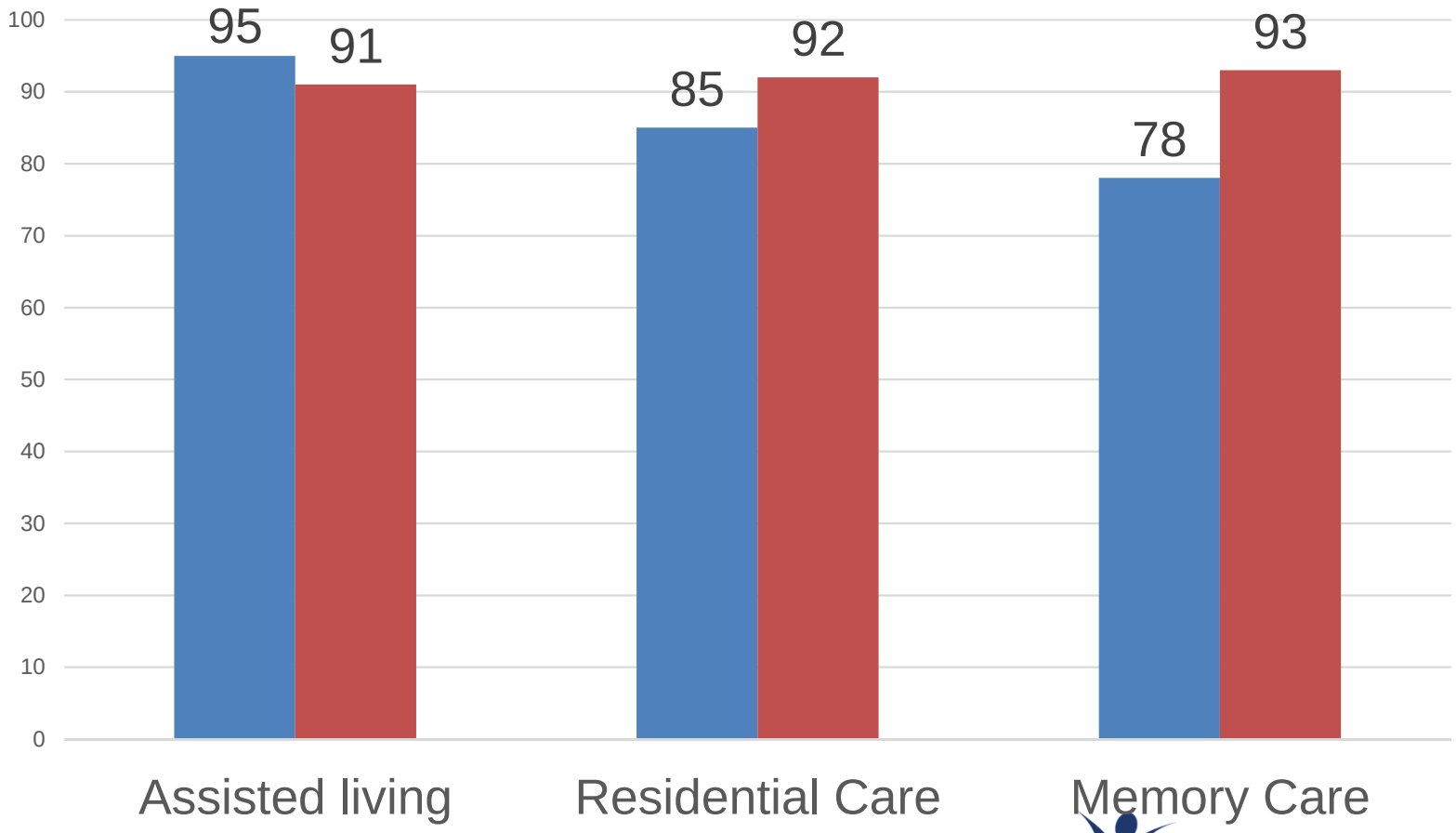
# Control Own Schedule: Get up and go to bed when want

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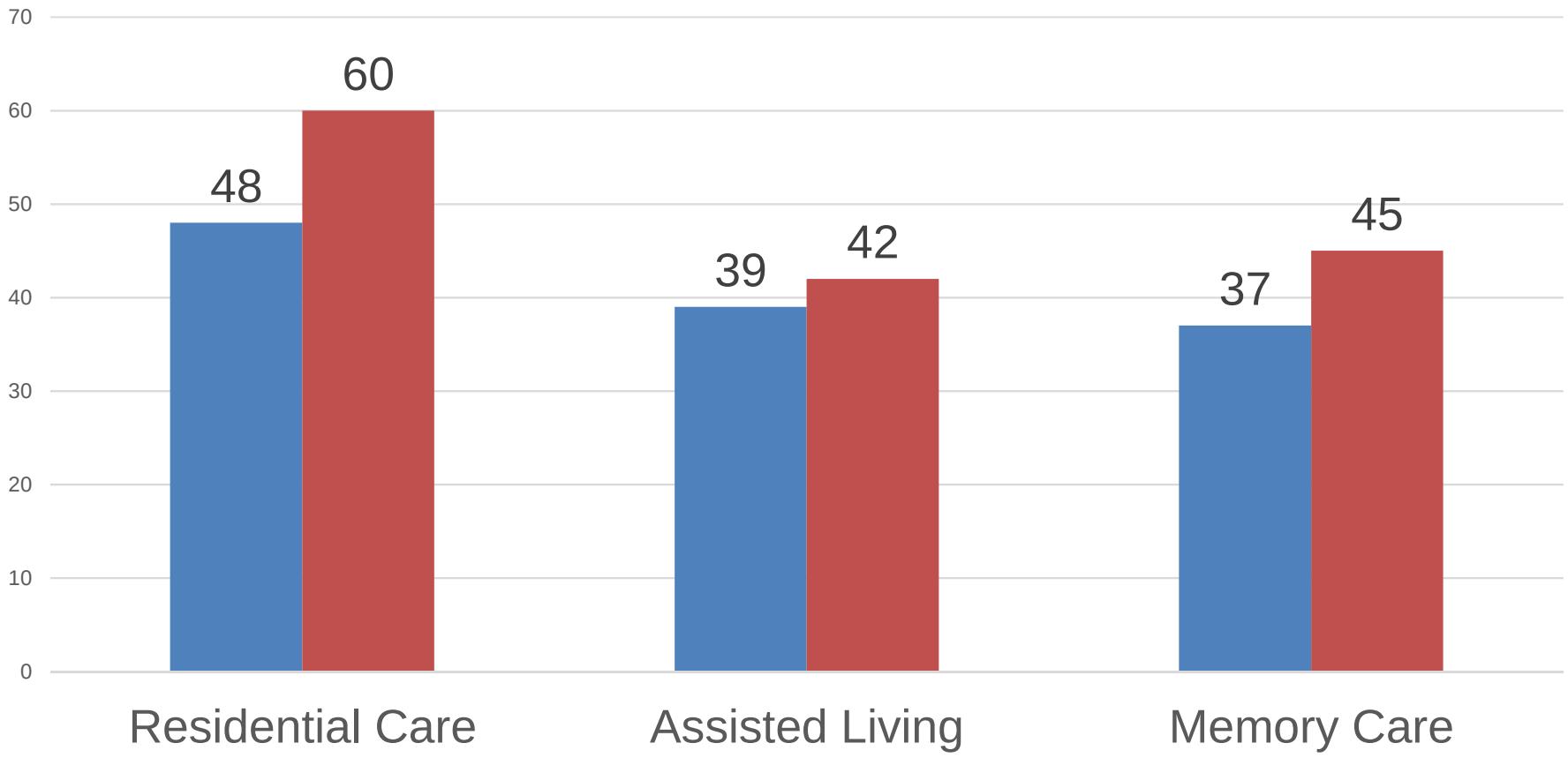
# Control own schedule: Eat meals when want

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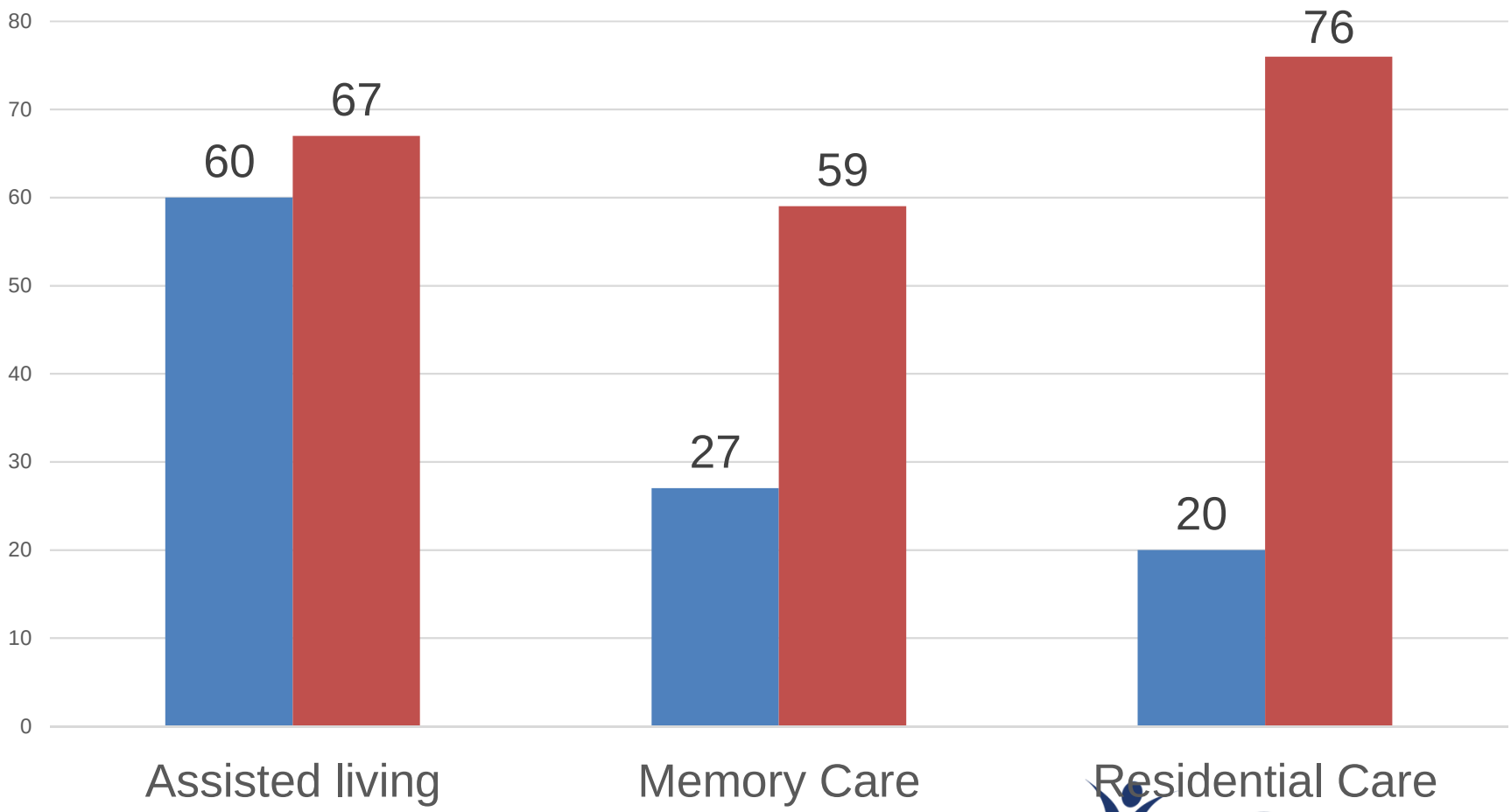
# Choice of Roommate

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# UPCOMING CHANGES - INDIVIDUALLY BASED LIMITATIONS

# Individually-Based Limitations



- An Individually-Based Limitation (IBL) is the way to limit an individual's HCBS rights.
- An IBL may only be implemented to ensure the individual's, or others', health or safety.
  - (See OAR 411-004-0040)

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# Individually-Based Limitations

- An Individually Based Limitation (IBL) is a way of taking away a right from someone who wants to exercise that right.
- IBLs are only an issue if the consumer is requesting to exercise the right(s).
- IBLs should be used as a last resort.

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# Rights that Cannot Be Limited

- Access to the broader/greater community
- Services in an integrated setting
- Accessible setting
- Control of personal resources
- Dignity and respect
- Residency agreement
- Services in a private room, if desired
- Services in a non-disability setting, if desired
- Ability to work, if desired
- Person-Centered Planning and Plans

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# These Rights Can Have an IBL

- Access own food at any time
- Choice in who roommate is in shared units
- Control own schedule and activities
- Decorate/Furnish
- Freedom from Restraint
- Locks on bedroom/living unit door\
- Visitors of own choosing at any time

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# IBL Process Overview

- Resident demonstrates issues with exercising right(s);
- Provider tries less restrictive interventions;
- Provider Screens for IBL need;
- Provider completes request for IBL;
- Resident agrees to IBL
- IBL implemented
- IBL monitored and reassessed

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# IBL Screening

- Consumer is requesting to exercise one or more of the rights
- The consumer is endangering their, or others', well-being.
- Consumer does not understand the risks or consequences of their actions/choices.

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# IBL Screening

- Cognition
  - The resident has a cognitive impairment that is causing the need for the IBL
- Health or safety risk
  - There is a significant risk to health and safety of the resident or others
- Ability to understand the risk
  - The resident does not understand the risk

# Consumer Understands Risks

- Consumer may voluntarily agree to limit behavior
- If the consumer does not agree, the provider may exercise all allowable actions as defined in OARs.

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# After Screening

- If the screening demonstrates that an IBL is warranted:
  - Complete request
  - Discuss with resident/representative
  - For Medicaid, contact case manager.
  - Obtain signature from resident/representative

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# Requesting an IBL

- Describe the IBL
  - What is the intended IBL?
  - Who proposed this IBL?
  - When is it implemented?
  - How often will the ?
  - How is the IBL proportional to the risk?
- Describe the reason for the IBL
  - Include how the need was assessed
  - Define the health or safety issue being addressed

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# Requesting an IBL, cont

- Describe what supports and strategies were tried prior to requesting the IBL
  - Include documentation of positive interventions used prior to the IBL;
  - Describe why they did not work, etc.
- Describe how this IBL is the most appropriate option and benefits the individual

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# Requesting an IBL, cont

- Describe how the effectiveness of the IBL will be measured
  - Include ongoing assessment and/or data collection and frequency of measurement, etc.
- Describe the plan for monitoring the safety, effectiveness, and continued need for the IBL
  - Include who is responsible for monitoring?
  - How frequently?
  - How is the ongoing need for the IBL to be determined?

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# 7/1/19 - 6/30/20 Implementation

- Rolling Implementation
  - Private-Pay
    - Review at Quarterly Care Plan Review
  - Medicaid
    - Review with Case Manager at Annual Reassessment
- All residents who need an IBL should be completed by 6/30/2020.

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# Rolling Implementation - Documentation

- Private-Pay
  - Complete Informed Consent to IBL form (APD 0556)
  - Meet with resident, their representatives and others important to the resident to obtain consent
  - Must have a non-facility staff witness
  - Keep form in consumer's file

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# Rolling Implementation - Documentation

- Medicaid
  - Case Manager will obtain consent through the resident's Service Plan Agreement
  - Service Plan will be provided to the provider and the consumer
  - Provider should keep copy of signed form in resident's file.

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# IBL Continuation

- After an IBL is put in place, it must be reviewed at least annually.
  - Is it still needed?
  - Is it still effective?
  - Are there other ways to address the issues?
- Private-Pay
  - May review for continued need at each Care Plan Review
- Medicaid
  - Will review for continued need at annual reassessment, or if resident's care needs change

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# No Consent & Understands Risks

- If the resident understands the consequences, s/he is making a choice to do the behavior/take the action.
- With rights come responsibilities.
  - The resident's rights do not trump the rights of others!
- **Criminal activity is never ok.**

# No Consent & Doesn't Understand Risks

- If the resident does not understand the consequences, s/he needs a representative.
  - If resident has a representative, use him/her.
- APD is still working on processes for individuals who need a representative but do not have one.
  - Providers will be informed before implementation begins

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# QUESTIONS?

- Provider Questions:
- HCBS General: HCBS.Oregon@state.or.us
- CBC-Related: CBC.Team@state.or.us

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