

Questions and Answers from OHCA Webinar 4/25/24 (not a transcript)

Answers provided by Oregon Department of Human Services, Aging and People with Disabilities staff:

- Chris Angel (Long Term Services and Supports, HCBS Policy and Project Manager)
- Meghan McClain (Safety, Oversight and Quality, Community-Based Care Policy Lead)

1. **Question:** What does the IBL process look like for residents who have dementia and maybe they don't even understand what they are signing?

Response: In those cases, you can/should have a family member sign on their behalf, like their spouse or their child, or their power of attorney, for example. The HCBS training through Oregon Care Partners goes through who is appropriate and how to do this. The next page of the IBL Process Flowchart talks about what do we do in those scenarios.

2. **Question:** In general, is an IBL less likely for residents in memory care who have dementia?

Response: It's not necessarily less likely. Since it's an individually base limitation – each of these are so individualized, it just depends on what rights you and the resident are wanting to limit. For memory care residents, it may not be the smoking or drinking. It might be something like a desire to leave the facility.

3. **Question:** Will there be any examples of an IBL form that is completed?

Response: We're not providing a completed form because people use it as a template and they'll copy and paste the language into their own forms. However, earlier today, we put out an instruction document for the IBL Request form (APD 0556). Hopefully, people will find it helpful. It will be translated into eight other languages. It should assist folks with what other documentation/information to share.

4. **Question:** Are physicians aware of this process and responses that are going to be required of them? Are they prepared for the workload of reviewing and responding to IBLs?

Response: We haven't specifically reached out to doctors across the state to tell them that they may have to give a statement that their patient is unable to consent to you limiting their rights. We could look at doing that. We haven't heard an outcry from that population, however. And since limitations are supposed to be the last resort, after all other things have been tried and have failed, we don't anticipate a major workload on doctors. But if that happens, we certainly can reach out to them and let them know.

5. **Question:** Can you give us an idea of what the wording would look like when updating a care plan with the IBL?

Response: Connect with your Surveyors. I think if you are putting in your care plans something like, just notating that 'in this area' (for example, under dietary) you could put that the individual does enjoy drinking wine... in conversation with the resident they have noted that this impacts their blood sugar and that they would prefer to have an IBL, so one is implemented in this area," is a way you could word it/handle that.

6. **Question:** On the form, is the provider the PCP that is filling out the IBL Request form?

Response: No, the provider is facility/administrator.

7. **Question:** If a resident has a carb-controlled diet ordered by a doctor and has been educated on benefits and risks but still chooses to eat a regular diet, would we need to do an IBL?

Response: No. An IBL is used when an HCBS right is being limited. There is no limitation here, as the resident is still eating a regular diet. In this case, you would do a risk agreement and work with your Policy Analyst. The risk agreement might say, "I should be on a carb-controlled diet by my doctor. Here's the risks associated. Here's other things that we have tried to make work. I'm going to still choose to eat this other diet. I acknowledge these risks. And here is how the facility is going to help keep me safe; helping remind me of blood glucose testing," or something like this.

8. **Question:** If the facility is locked down, would all residents need an IBL?

Response: An IBL would only be needed if the resident wants to exercise the right to leave and they (or their representative) consent to having that right limited. If you have a person in a memory care (or their representative) who is not willing to consent to being restricted from coming and going, that is a question you need to talk about with your Policy Analyst. It also raises questions about maybe why they are in that facility.

9. **Question:** If a guardian of a client states, "I don't want this resident to go on outings at this time due to outburst and elopements," will we need an IBL?

Response: Yes, if you are limiting the person's right to control their own schedule and activities (to come and go), you would need an IBL, consented to by the guardian.

10. a. **Question:** If a resident does not have the capacity to use a key for their apartment, do we have to do an IBL?

Response: Yes. Regarding the door lock itself, everyone has to have a lock on either their bedroom door or the entrance door to their living unit. And everyone must be given a key. If a person doesn't want to use the lock, they don't have to. If they don't want to use the key, they don't have to. If the resident wants to put it in the locked box in their room and never use it, that is their choice. Or they can give their key to their

family/friend. But the federal government says they have to have the lock, they have to have the key. There are very few circumstances where a lock might be removed. An IBL could be done for not giving the resident a key if doing so poses a moderate risk to the health/safety of the individual or others. But an IBL is the last resort.

b. Follow-Up Question: Wouldn't the doctor's move-in orders stating that they need to be in a secure facility be all we need (i.e., no IBL needed, since they live in a secure setting)?

Response: No, because everyone has the right to come and go. However, for their safety, they now reside in the secure setting. So, if they are actively exit seeking and live in a secure setting, an IBL is needed.

11. Question: If someone in memory care unit is exiting seeking but redirection works, do we still need to do the IBL?

Response: No. If the person can be redirected, an IBL is not needed.

12. Question: Do pin pad or keypad door locks that use a code instead of a key meet the HCBS requirements around privacy and having a lock on the door and giving residents a key?

Response: A pin pad or keypad door lock that uses a code instead of a key may be used, but providers will need to make ADA accommodations, as needed.

13. Question: If a resident wants to have a visitor over but that visitor has been banned from the building, would we need to do an IBL?

Response: That would be a hard one because the individual wants to exercise their right to have a visitor of their own choosing at any time, so it is unlikely they will agree to the IBL. In that case I would suggest you talk to your Policy Analyst. There are other ways for the resident to meet with the visitor. Maybe you help facilitate meeting with that person outside of the facility, or set up a safe way to meet in the facility (for example, in a meeting or visitation room). If the visitor has been legally trespassed, you may facilitate the resident meeting with their visitor outside of the building.

14. Question: If a resident has advanced dementia and is physically unable to use their key, do you have to do an IBL?

Response: No. If you've given them the key, then they have the key. It can be stored in the locked box in their room; they don't have to use it. We understand that it would be inconvenient for staff to have to go unlock their door if they get locked out, but that is what staff in most facilities do.

15. Question: What if the individual does not consent to the IBL but their guardian does?

Response: A guardianship takes legal authority and decision making away from the individual and gives it to their guardian. This means the guardian is able to sign on behalf of the resident, since they are court-appointed to make decisions for that person.

16. Question: We have a resident who lives in a secure, non-smoking setting, and who has a visitor who gives them smoking items. The visitor has been asked to stop doing this, and eventually they were trespassed. Should we do an IBL?

Response: The visitor has been trespassed, so they can't come in. An IBL isn't necessary if they are not allowed into the building. However, if you still want them to be able to visit with the person if and when the trespass is lifted, perhaps an IBL limiting the person's HCBS right to having "visitors of their choice at any time" could be considered, making an arrangement for offsite visits that could work for both of them.

17. Question: What if the person with dementia does not have a medical Power of Attorney (POA) or legal guardian but only an "emergency contact"? Does this count as a person who can consent for the resident?

Response: Please note that many POAs are specific to financial matters. So, it doesn't matter if they have that title or not. If it is someone that this individual has designated to consent on their behalf or to make decisions for them (family, friend, POA), or they have in the past and now they're unable to make their own decisions, then that's good enough. It doesn't have to have to be a medical POA or legal guardian.

18. Question: If one resident has a restraining order against another resident in the same community, do we need to do an IBL for the resident the order is on?

Response: No, because you have a legal document obligating the two to remain separated; it's not a matter of consenting to be apart.

19. Question: If a resident in facility has a family member who is trespassed from the building do we have to do an IBL?

Response: No, because you have a legal document saying that this person is not allowed in the facility.

20. Question: A resident regularly goes out with a person who has been trespassed from the building. The resident always returns with cigarettes, even though it is a non-smoking property. Is this ok?

Response: The resident may return with cigarettes, as long as they are not smoking on the property. If they are smoking on the property, you might start with having a care conference stating, and putting in writing, that the individual is putting their placement in jeopardy. Talk to your Policy Analyst. You may want to talk about doing a risk agreement. Start talking with them about ways they are violating the residency agreement (and perhaps the Oregon Indoor Clean Air Act). You may potentially even do a move-out notice.

21. Question: Would our Policy Analyst be the best person to ask if we have questions about whether an IBL should be used in the future?

Response: Yes, you would ask your Policy Analyst. You may also reach out to HCBS Oregon. And if the person is Medicaid, you may reach out to the Case Manager.

22. Question: Can you define exit seeking more clearly?

Response: If a person is saying, either verbally or by their actions that they want to leave – maybe they are trying to open the doors, pulling on the doors, banging on the door or window and they are not able to be redirected, that is ‘active’ exit seeking. If they are looking like they want to leave and they can be easily redirected (for example, they respond to the suggestion of doing an activity with others), then you would not need to do an IBL.

23. Question: This is confusing and seems to contradict what we were told an IBL is for on the earlier CBC call we were on. They also seem to be confused. For memory care, it sounds like we need an IBL for everyone. Is that right?

Response: For individuals who are in a secure setting, you need an IBL if they are actively trying to exercise their right to leave; meaning they are actively exit seeking and not able to be redirected. In those cases, you could do an IBL with the individual’s representative if they are not able to sign it themselves.

24. Question: Thoughts on pressure alarms and how they might come into play?

Response: If the resident wants a pressure alarm, make sure it isn’t making a very loud noise that would be disturbing to them or other residents. An IBL wouldn’t be needed for a pressure alarm unless the individual has PTSD around alarms. Generally speaking, though, these are not considered restraints and do not need IBLs.

25. Question: Does the IBL need to be added into the Service Plan?

Response: Yes, that is a good idea because you are then able to show how you’re implementing it. We’d also encourage adding risk agreements and behavioral intervention plans to the service plan. Anything like that, if you can put it into the service plan, it helps create a more robust way of tracking what is going on with that resident.

26. Question: Once the IBL Review Workgroup has reviewed the submitted documents, what happens next?

Response: The provider will receive an email with feedback about what can be put into place or what needs to change.

27. Question: Do we have to do an IBL to restrict a resident’s access to potentially hazardous chemicals (deodorant, toothpaste, shampoos, etc.)?

Response: If the resident is trying to eat these items, put it in the service plan. It is a safety issue. An IBL is not needed because you are not trying to limit one of their HCBS rights.