Home & Community Based Services Setting Rule

Department of Medical Assistance Service

and

Department of Behavioral Health and Developmental Services

Purpose

The purpose of this training is to give a brief overview of the Home and Community Based Services Settings Rule in regards to person-centered practices; individual autonomy, dignity and respect; coercion and restraint; and community participation .

Upcoming Training Topics

Be on the lookout for subsequent trainings that will occur every 2 weeks following this training.

- Residential Specific Rights; modifications- 4/8/22 at 10am

- Documentation- 4/22/22 at 10am

Home and Community Based Services

The Home and Community-Based Services (HCBS) settings regulations (previously known as the "Final Rule") were published in the Federal Register on January 16, 2014; they became effective March 17, 2014. States have until March 17, 2023 to come into compliance.

Home and Community Based Services

These rules apply to the following services:

- Group homes
- Sponsored placements
- Supported living residential services
- Group Day
- Group Supported Employment

People First Language

- The intent of the HCBS settings regulations is to ensure that individuals receiving HCBS through Medicaid have full access to the benefits of community living and receiving services in the most integrated setting.
- These new requirements focus on the experience of the individual and ensuring the setting has the qualities of community versus the qualities of an institutional setting.
- Language used to describe individuals, including where they live, the services they receive and how they receive those services, should reflect the characteristics of community, respect and dignity for the individual receiving services.
  - Here are some general suggestions for speaking to and about people with disabilities in a manner that respects who they are as individuals.
  - Although each person has her or his own style of communication, these guidelines may assist with interactions.

People First Language Best Practices

- In referring to people with disabilities, it is preferable to use language that focuses on their abilities rather than their disabilities. Therefore, the use of the terms "handicapped," "able-bodied," "physically challenged," “non-verbal,” and "differently abled" is discouraged.

- Possessive Language – Words such as “client,” “participant,” “patient,” “consumer,” etc along with “MY individual(s)”

People First Language Best Practices

To demonstrate respect and dignity, it may also be helpful to keep the following points in mind when communicating with or about people with disabilities:

- Never use the article "the" with a specific disability to describe people with that disability. The preferred term, "people with disabilities," stresses the humanity of the individuals and avoids objectification. If it is appropriate to refer to a person's disability, be sure to use the correct terminology for the specific disability. Example: NOT "the blind" USE "people who are blind"
- Avoid using terms that define a person's disability as a limitation. Example: NOT "confined to a wheelchair" or "wheelchair bound" USE "wheelchair user" or "uses a wheelchair". Terms such as "victim" or "sufferer" should not be used to refer to people who have a disability or disease as this is dehumanizing and implies powerlessness. Example: NOT "suffers from Cerebral Palsy" USE "person with Cerebral Palsy"

Coercion and Restraint

Coercion – (Definition) The use of expressed or implied threats of violence or reprisal or other intimidating behavior that puts a person in immediate fear of the consequences in order to compel that person to act against his or her will OR subtle language or actions intended to persuade or otherwise influence someone to do something that they might typically be unwilling to do, using tactics such as emotions, psychology, imagination, or indoctrination.

- Example: A provider requiring that an individual complete a chore otherwise an outing/activity will not occur

Restraint – (Definition) a measure or condition that keeps someone or something under control or within limits

- Example: An individual locked in or out of a room; Bed rails kept in an inaccessible position; Certain medications; etc

Coercion

- Individuals have the right to decline without the risk of "losing" something in return
  - Example: Tom refused to do his assigned chore this evening so was told that he would be unable to attend an ice cream outing. Tom went to his room and spent the night watching TV by himself.
  - Best Practice: Tom chose to go to Dairy Queen with staff. Tom informed DQ staff that he would like a chocolate swirl cone and smiled while he chatted with his housemates. Upon return to his home, Tom stated "that was a lot of fun!"
- Documentation should refrain from using statements such as "individual refused" or "staff told" or "staff allowed"
- Repeatedly asking someone to do something until they give in is also a form of Coercion

Restraints

- Any measure that keeps an individual under control
- Types of Restraints:
  - Physical Restraints
  - Chemical Restraints
  - Mechanical Restraints
- Effective staff training should ensure that staff are aware of the setting's policy and are equipped with knowledge related to:
  - De-escalation Techniques
  - Recognizing Triggers
  - Least Restrictive Interventions

Restraints vs Rights Modifications

- Restraints are an absolute last resort only to the minimum extent necessary to protect the individual or others
- Rights Modifications are the result of safety concerns and involve the individual, service provider team, physician, guardian, etc. in determining the best intervention for this specific individual
- Rights Modifications require specific documentation and frequent re-evaluations

Autonomy: Coercion and Restraint

Individuals have the right to make their own choices and by utilizing coercion and restraints, even subconsciously, creates an atmosphere that is not HCBS compliant.

Autonomy, Dignity, Privacy and Respect

Autonomy refers to individual control of decision making and of other activities. In a practical sense, it is the ability of an individual to direct how he or she lives on a day-to-day basis according to personal values, beliefs and preferences. In our case, this involves the person who uses HCBS services making informed decisions about the support that he or she receives.

- Example: John declined participating in the group activity this afternoon and was asked what he would like to do instead. John decided to go to his room to read a new book until the group activity was over. John can create and direct his daily schedules. These choices are reflected in daily notes.

Dignity

Dignity and autonomy are at the foundation of human rights. Dignity refers to an individual maintaining self-respect and being valued by others. Respecting human dignity is an overarching principle within the law and in most regulations. Human dignity has intrinsic value and should be applied equally to all human beings, regardless of ability.

- Examples: Think about how you are speaking to individuals and writing about individuals. Mary isn't "playing" with beads in her room. Mary is engaging in a sensory activity in her room by using her bead box.

Privacy

How is **privacy** related to autonomy? Autonomy privacy is an individual's ability to conduct activities without concern of or actual observation. Individuals can perform/receive personal care in a private area and with discretion and dignity.

- Examples: John needs assistance to clean himself after a bowel movement. So, the DSP waited outside the closed door until he indicated he was finished and gave her permission to come in to assist. This is reflected in daily notes.

Respect

Autonomy relates to being human and worthy of respect. The principle of **Respect** for autonomy is usually associated with enabling individuals to make their own decisions about which services they will or will not receive. Respect is about recognizing individual's decisions and their right to make those decisions.

- Example: Mary picks out the clothing that she wants to wear every day. Today, she chose to wear purple pants and a red sweat shirt. This Individual dressed herself in clothes that meet her personal preferences. These choices are reflected in daily notes.

Autonomy, Dignity, Privacy, Respect Continued

- Staff assist individuals with all personal care in a dignified manner.
- Individuals are addressed by their preferred name.
- Staff do not discuss an individual who is present like he/she is not there. They include the Individual in conversation.
- Staff converse respectfully with people while providing care and assistance, regardless of the person's ability to vocalize a response.
- Individuals have access to make and receive private telephone calls and access to personal communication via text, email or other personal communication method.
- In any setting, people's full names or personal or health information are not left in public view for others to see.
- Staff are trained on confidentiality policies and practices. Consider HCBS training more than once annually.
- Individuals have access to spaces for private conversations or quiet time (e.g., a place to be alone if someone is upset or wants to relax in a quiet area).
- Individuals have personalized bedrooms with locking doors and have their keys in their possession.
- Please be mindful of these HCBS rights in spoken word, actions, policies, and documentation. Documentation should clearly demonstrate how individuals are respected, dignified, and given privacy.

Community Participation

- Integrated settings provide people the opportunity to live, work, and receive services in the greater community.
- They offer access to community activities when and with whom the person chooses.
- They offer people choices in daily life activities and encourage interaction with people without disabilities or who are not receiving HCBS.
  - Individuals' receiving services and supports are afforded opportunities to participate in community activities that are based on their personal interests or preferences.
  - Individuals will be free to choose the activities they participate in and staff will provide the supports needed for full participation.

Community Participation Best Practices

- Individuals shall be offered opportunities to participate in activities in the local community in which they live.
- While in the community, the DSP will facilitate and support individuals to make acquaintances and find friends, other than paid support staff, with whom to engage, interact and enjoy the community.
- While at a work-site (i.e. in supported employment), individuals will be encouraged to engage with co-workers and to participate in work-site activities.
- Opportunities to enjoy community participation should be done 1:1 or in small groups as is feasible to encourage interaction and connection with community members.

More Best Practices

- DSPs act as a role model for community members to support greater integration, inclusion and developing relationships.
- DSPs in all programs should, if appropriate, assist individuals to become part of the local community by volunteering, joining a club, or taking a class, etc.
- DSPs identify transportation options and provide transportation to activities and events. DSPs support individuals in exploring options for transportation to access the community (e.g., use of public transit, family, friends, companion services, volunteers).
- Opportunities offered and experienced will be documented in individuals' notes.

Community Life

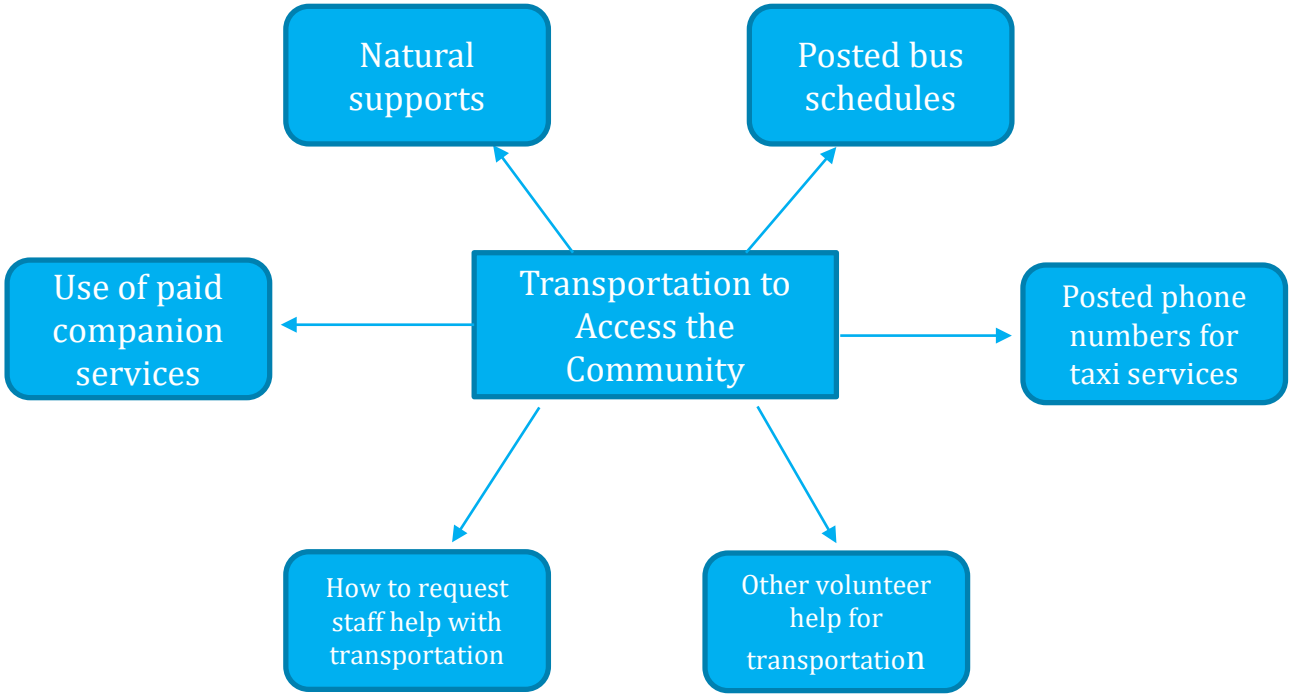
HCBS Settings Requirement: The setting is integrated and supports full access to the greater community. This includes opportunities to seek employment and work in competitive integrated settings, engage in community life, control personal resources and receive services in the community, to the same degree of access as individuals who do not receive HCBS.

Community Life Cont'd

Intent (Community Life): Individuals who receive HCBS have equal access to the same community resources and activities available to the greater community. Rules and practices that facilitate community access should be established. When providing Medicaid waiver services and supports individuals should not be isolated from individuals who do not have disabilities. As a provider, you must ensure that your practices do not create an environment that is institutional in nature. You support individuals in their desires to participate in the community providing opportunities for new experiences using the philosophy and practice of person-centered thinking to:

- Ensure individuals have opportunities and supports needed to be fully included in the community
- Identify information on transportation options
- Assist with developing meaningful relationships
- Ensure that individuals have services, resources, and supports to explore and engage in meaningful activities

Community Life Best Practices



Final Thoughts…..

Is integration different for everyone?

- Yes, each individual may have different needs and different desires. Direct support professionals (DSPs) should be educated and trained to address individual needs and desires. DSP's seek and discover ways to support each individual to the extent possible. One individual's needs should not limit another person's freedoms and opportunities. To fully support community integration, settings must facilitate individuals taking part in age appropriate opportunities in the community.

HCBS Setting Basics:

- Be Integrated and support access to the greater community;
- Provide opportunities to seek employment and work in competitive integrated settings;
- Facilitate individual choice regarding services & supports and who provides them;
- Ensure an individual's rights of privacy, dignity, respect, and freedom from coercion and restraint;
- Be selected by the individual from among setting options, including non-disability specific settings.

Strategies for Compliance

- Develop and implement a policy on community integration/participation that describes expectations for staff and for how and when opportunities and preferences of individuals will be sought.
- Include in staff position descriptions expectations for knowledge of and compliance with the HCBS settings requirements.

Strategies for Compliance

- Incorporate a policy and practice to regularly seek input from individuals supported and their families/guardians on their experience with services and recommendations to enhance community participation.

- Review policies, procedures, mission statements, forms, marketing materials to acknowledge and incorporate HCBS rights and settings requirements.

Strategies for Compliance

- Update outdated language and terminology in policies, procedures, mission statements, forms, marketing materials, etc.
- Develop and implement an HCBS compliance self-assessment for direct support professionals to determine staff perceptions of each settings' compliance with HCBS rights and expectations and recommendations for improvement.
- Train staff often on HCBS rights. Incorporate scenarios, interactive sessions and meaningful dialogue as often as possible throughout all staff levels.

Strategies for Compliance

- Develop and implement an internal HCBS team with direct support professionals at each setting operated by your organization. This team can be cultivated to be HCBS subject matter experts at their specific setting.
- The team can discuss HCBS implementation, troubleshoot and brainstorm on specific situations and questions, discuss new and creative strategies to facilitate increased community participation, facilitate discussions with individuals supported on their experience, preferences and ideas, etc.

Full Compliance

- Once a setting has achieved full compliance, a letter will be sent to the provider.
- **Reaching HCBS compliance is not a one-time achievement**. A provider must maintain their compliance status which will be monitored on an ongoing basis through:
  - The DBHDS Office of Licensing
  - The Office of Human Rights
  - DMAS QMR
  - Support Coordination and other quality monitoring reviews.
- **If a setting can't reach full compliance, the provider participation agreement will be reviewed**. Possible consequences include
  - suspension of billing, and
  - removal of the agreement.

HCBS Resources

Statewide Waiver Transition Plan for review:

http://www.dmas.virginia.gov/Content_pgs/HCBS.aspx

HCBS Resources

The Toolkit can be located on the DMAS Website:

https://www.dmas.virginia.gov/for-providers/long-term-care/waivers/home-and-community-based-services-toolkit/

HCBS Resource

Additional questions can be sent to your regional CRC

Region 1 - Todd Cramer
todd.cramer@dbhds.Virginia.gov

Region 2 – Nedria Ames
nedria.ames@dbhds.virginia.gov

Region 3 - Todd Cramer
todd.cramer@dbhds.virginia.gov

Region 4 – Ronnitta Clements
ronnitta.clements@dbhds.virginia.gov

Region 5 – Michelle Guziewicz
michelle.guziewicz@dbhds.virginia.gov

HCBS Resource

You may also reach out directly to DMAS

hcbscomments@dmas.virginia.gov

Questions?