

Home & Community Based Services – Final Rule Statewide Training

September 10, 2015-Minot

September 14, 2015-Fargo

September 15, 2015-Grand Forks

September 17, 2015-Bismarck

September 22, 2015 Statewide video conferencing

Training will cover:

- ❑ Final Rule Requirements
- ❑ Settings that are excluded as permissible settings
- ❑ The person-centered planning process and documentation requirements
- ❑ Transition plan activities to comply with any non-compliant areas



Change is Difficult, but Necessary

“When you’re finished changing, you’re finished”-Ben Franklin

Home and Community Based Services



- ❑ Waiver services - known as Home and Community Based Services or HCBS

- ❑ Medicaid funds are used

- ❑ Waiver allows individuals to choose services at home or in the community instead of an institutional setting

- ❑ Affects all waivers
 - Includes Traditional IID/DD Waiver services

Disclaimer

- ❑ CMS Final Rule regulation is underlined
- ❑ Based on variety information & material from CMS
- ❑ CMS continues to clarify the requirements
 - Information based on current point of time



Overview of the Rule

- ❑ New requirements established by Centers for Medicare and Medicaid Services (CMS)
- ❑ Effective March 17, 2014
- ❑ To receive Medicaid federal funds, must comply
- ❑ Based on characteristics and individual experiences
- ❑ Full access of community living and services

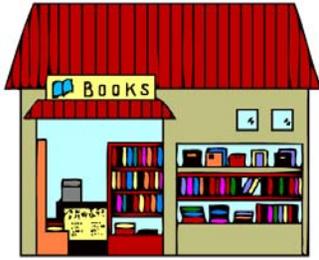
Overview of the Rule

- ❑ Enhancement on choice & control-empowering and supporting to make big and small life decisions
- ❑ Rights are respected and should be same as any citizen
- ❑ Planning process is person-centered
- ❑ Improving the quality of what we do



Overview of the Rule

- ❑ States required to develop a Transition Plan
 - ✓ Complete assessment on settings
 - ✓ Identify remedial actions, timeframes, assuring compliance, and ongoing monitoring for non-compliant settings
 - ✓ Includes changes to policy, licensure, etc.
 - ✓ Public comment period



What is a Setting



- ❑ A location where a HCBS may be provided

- ❑ Residential and non-residential (home, work, day services)
 - Residential- living outside of family home **and** receiving supports from provider

- ❑ Private home or a relatives home
 - Living with family or primary caregiver
 - Presumed to meet the setting requirements
 - Plan requirements apply to ensure community integration
 - Still need to experience rights and have rights protected

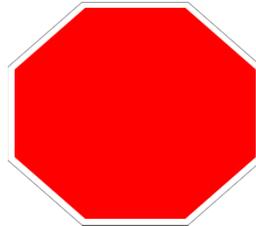
Settings not Home and Community Based

Settings Not Allowed

- Settings that are not Home and Community Based:
 - Nursing facility
 - Institution for mental diseases (IMD)
 - Intermediate care facility for individuals with intellectual disabilities (ICF/IID)
 - Hospital

Identified by CMS to have institutional characteristics

Cannot utilize HCBS waiver funds in these settings for home, work, or day services



Settings Not Allowed-Transition Plan Activity

Day Supports located in ICF/IID

- ❑ Identified 4 locations with 5 individuals
 - ✓ Services can no longer be authorized for waiver recipients in ICF/IID settings
 - ✓ March 2017-individuals identified will receive day support services in other settings
 - Choices among services and providers
 - Opportunities to visit, interview, and tour
 - Team meets as needed

Settings Not Allowed-Transition Plan Activity

Adult Day Health located in hospital or nursing facility

❑ 0 settings with 0 individuals

- ✓ Services can no longer be authorized for waiver recipients for this service
- ✓ July 2016-DD Division removing service from waiver-not utilized since 2011

Settings That May Not Comply

- Settings presumed not to be Home and Community Based:
 - ✓ Settings in a publicly or privately-owned facility providing inpatient treatment
 - ✓ Settings on grounds of, or adjacent to, a public institution
 - ✓ Settings with the effect of isolating individuals from the broader community

May have institutional characteristics

Cannot utilize HCBS waiver funds in these settings for home, work, or day services **unless** states provide evidence to CMS they do have qualities of HCBS characteristic and go through a review



Settings That May Not Comply- Transition Plan Activity

Residential settings and Day Supports on the grounds of the State ICF/IID

- ❑ 4 residential settings with 8 individuals
- ❑ 1 Day Support with 17 individuals
 - ✓ Submitted justification for home and community based characteristics and qualities
 - ✓ Heightened scrutiny review by CMS

Settings That May Have the Effect of Isolating

- ❑ Isolating-the absence from the community/limited interaction
- ❑ Settings that isolate may be corrected
- ❑ Rural communities- not isolating if have same opportunity for community integration as everyone else

- ❑ Acceptable to receive services with other people who have either same or similar disability but-
 - Option of a setting not exclusive to people with same or similar disability is available
 - Setting facilitates people going out into the broader community

Settings That May Have the Effect of Isolating

- ❑ CMS provided additional guidance
 - ✓ Multiple types of services & activities on-site
 - ✓ Gated/secured “community” for people with disabilities
 - ✓ Residential schools
 - ✓ Multiple settings co-located and operationally related congregating large number of people

Setting Requirements

Setting Requirements

- ❑ 1. Is integrated in and supports full access of individuals receiving Medicaid HCBS to the greater community, including 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 not receiving Medicaid HCBS.
 - ✓ Located among other residential buildings, retail businesses, etc..
 - ✓ Fully included & part of the community
 - ✓ Regular, meaningful, non-work, and age-appropriate activities
 - ✓ Working along other citizens in the community
 - ✓ Options for employment & skills training are provided

Setting Requirements

Setting integration cont.

- ✓ Variety of activities outside the setting
- ✓ Ability to come and go (consider individual's safety)
- ✓ Full access to typical facilities (break room, laundry, pool, etc.)
- ✓ Access, recourses, and training on public transportation
- ✓ Visitors are present, choice in visitors, and not restricted to certain visiting hours or areas
- ✓ Access to money & personal bank accounts
- ✓ Setting is physically accessible to the individual (grab bars, ramps, etc.)



Setting Requirements-Transition Plan Activity

Changes needed for more community interaction

□ Identified 2 settings- Extended Services

- ✓ September 2015-DD Division/DDPA's provide assistance and training to identified providers
- ✓ January 2016-begin to update policies and manuals
- ✓ July 2016-DD Division add additional waiver services
 - Opportunities for work in integrated, competitive employment settings
 - Partnering with local business
 - Training and support for individuals
- ✓ December 2016-update Administrative Code

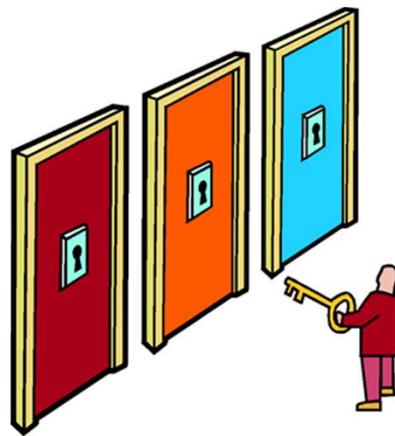
Setting Requirements

- ❑ 2. Setting is selected by the individual from among setting options including non-disability specific settings and an option for a private unit in a residential setting. The setting options are identified and documented in the person-centered service plan and are based on the individual's needs, preferences, and for residential settings, resources available for room and board.
 - ✓ Includes options not exclusive to people with same or similar disability
 - ✓ Given a choice of available options & opportunities to visit
 - ✓ Informed choice-identifying and comparing options
 - ✓ Options for competitive employment, community volunteering, etc.

Setting Requirements

Setting selection cont.

- ✓ Setting reflects individual needs and preferences
- ✓ Consider individual's availability of funds in residence choice
- ✓ Option for private bedroom with choice of roommate
- ✓ Setting choices and selection must be documented in the plan





Setting Requirements

- 3. Ensures individual's rights of privacy, dignity, and respect, and freedom from coercion and restraint
 - ✓ Information is kept private & schedules are not posted
 - ✓ Ability to make private phone calls
 - ✓ Personal assistance is private (cares, med administration, etc.)
 - ✓ Meal time-assistance, conversations, seating, etc.

Setting Requirements

- Rights and freedom cont.
 - ✓ Staff interactions and communications (use preferred names, participate in conversations, etc.)
 - ✓ Supports and plans are specific to the individual
 - ✓ Informed consent is obtained and Due Process given
 - ✓ Individuals know the person and process to discuss concerns or make a complaint

Setting Requirements

- 4. Optimizes, but does not regiment, individual initiative, autonomy, and independence in making life choices, including but not limited to, daily activities, physical environments, and with whom to interact
 - ✓ Individuals decide and do things on own to the best of their abilities
 - ✓ Opportunity provided to negotiate work schedule, breaks, etc.
 - ✓ No barriers such as locked doors, gates preventing entrance/exit from areas of the setting.

Setting Requirements

- Initiative, autonomy, and choices cont.
 - ✓ Choice to participate in activities & with whom
 - ✓ Choose own schedules, not adhere to a set schedule (waking, eating, bathing, etc..)
 - ✓ Choose when and what to eat, snacks accessible
 - ✓ Access to TV, radio, computer, leisure activities of interest, etc..





Setting Requirements



- ❑ 5. Facilitates individual choice regarding services and supports, and who provides them
 - ✓ Provided choices and select the services they receive and providers of those services
 - ✓ Opportunity to update, change preferences, and request a new provider
 - ✓ Active role in the development and updates of their plan
 - ✓ Choice among community services (pharmacy, physicians, physical therapy, etc..)



Setting Requirements

Note: DD Division established the following standards for ALL residential settings unless otherwise noted.

- ❑ 6. In a provider-owned or controlled residential setting, in addition to the qualities specified above, the following additional conditions must be met:
 - Provider owned: owns the property or leases from a third party

- ❑ A. Residential settings have a legally enforceable agreement and the individual has, at a minimum, the same responsibilities and protections from eviction that tenants have under the landlord/tenant law....
 - ✓ **Provider-owned residential settings only**
 - ✓ Apartment units and buildings, homes, group homes, etc. (does not include ICF/IID)
 - ✓ Each individual must have a lease

Setting Requirements



Lease cont.

❑ Lease should contain

- ✓ Same responsibilities and protections from eviction as all tenants under landlord tenant law
- ✓ Clear termination conditions, termination process, days required, etc..
- ✓ Must follow and reference ND Administrative Code requirements if terminating lease before term is up

❑ Lease should not contain

- ✓ Items that conflict with CMS Rules and ND landlord/tenant laws
- ✓ House rules, visitor restrictions, or anything that conflict with the rights of the New Rules (privacy, dignity, respect, freedom from coercion and restraint, choices, access to food, activities, etc..)

Setting Requirements-Transition Plan Activity

Identified 96 Provider-owned community residences-
provide lease

- ✓ June 2015- DD Division provides information to providers
 - Sample lease guide with minimum requirements
 - Lease policy- address and contain CMS requirements and ND landlord/tenant law protections and eviction requirements
- ✓ January 2016-begin to update policies and manuals
- ✓ July 1, 2016-providers submit lease template and lease policy to DD Division for review
- ✓ December 2016-update Administrative Code

Setting Requirements-Transition Plan Activity

BASIC LEASE AGREEMENT

THIS AGREEMENT made this ___ day of _____, 20___, by and between _____ ("Landlord") and _____ ("Tenant"). Landlord hereby agrees to rent to Tenant in the dwelling located at _____ under the following terms and conditions.

1. RENT. Tenant agrees to pay Landlord \$_____ per month, payable on the ___ day of each month.
2. TERM OF LEASE AND TERMINATION. This Lease shall commence on _____ and terminate on _____ unless otherwise terminated. Upon expiration of initial lease, lease shall automatically renew on a month to month basis. Either party may terminate this Agreement by giving at least _____ calendar days' written notice. The rent is due up to and including the date of termination.

[Reasons for termination by Landlord need to be listed. NDCC 47-16-15 provides that in month to month tenancies, unless the parties have otherwise agreed in writing to a longer notice period or a different notice time, either party may terminate by giving at least one calendar month's written notice. Most leases require either 30 day or 60 day notice to terminate. If there are circumstances (i.e. property damage) under which the Landlord may terminate the lease with less than 30 days' written notice, this should be stated clearly in the lease and the tenant should initial this section.]

3. LANDLORD OBLIGATIONS. Landlord agrees to provide the following:
[Add provisions]
4. TENANT OBLIGATIONS. Tenant agrees to the following:
[This can include rental rules. Or, if rental rules are on a separate document: "Tenant shall comply with all rental rules as stated on the separate attachment entitled " Rental Rules", which are deemed part of this Agreement."]
5. VIOLATION. If Tenant violates a material term of this Agreement or fails to pay rent for ___ days after rent is due, Landlord may terminate this Agreement. Any eviction action by Landlord shall comply with NDCC chap. 47-32.

Tenant hereby acknowledges that Tenant has read this Agreement, understands it, agrees to it, and has been given a copy.

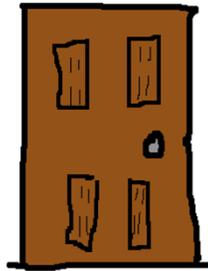
Tenant _____ Date _____

Landlord _____ Date _____

NOTES:
This is only an example. You do not have to follow this format. Also, this example has only the basic terms. There are many terms that could be added, such as security deposit, late fee, grace period for rent payment, etc.
You do not have to use the terms "Landlord" and "Tenant" if you do not want to. They could be replaced with "Owner" and "Resident" for example.
There is a very good explanation of ND landlord/tenant law at the following website, with a printable handout: http://www.legalassist.org/?id=86&form_data_id=38. North Dakota Apartment Association (www.ndaa.net) also has a booklet on landlord/tenant rights available on their website.
The landlord/tenant laws are found at North Dakota Century Code chapter 47-16 and chapter 47-32. <http://www.legis.nd.gov/cencode/47.html>
NDCC 47-16-07.2 requires that a landlord provide the tenant with a statement (check-in sheet) describing the condition of the facilities in and about the premises to be rented at the time of entering into a lease agreement. The statement shall be agreed to and signed by the landlord and tenant.
Examples of items not to be listed in the lease agreement include but, are not limited to, house rules, visitor restrictions, or anything that conflicts with the new HCBS rules.

Setting Requirements

- B. Each individual has privacy in their sleeping or living unit:
 - Units have entrance doors lockable by the individual, with only appropriate staff having keys to doors
 - ✓ **Provider-owned residential settings only**
 - ✓ Apartment units and buildings, homes, group homes, etc. (does not include ICF/IID)
 - ✓ Individuals can lock bedroom door and have keys
 - ✓ Staff can have keys and the planning process identifies circumstances, emergency situations, etc.. for the use
 - ✓ Individuals have keys to their residence



Setting Requirements-Transition Plan Activity

Identified 96 Provider-owned community residences-
have lockable bedroom doors

- ✓ January 2016-begin to update policies and manuals
- ✓ July 1, 2016-lockable bedroom doors installed
- ✓ Teams meet as needed
- ✓ Environmental Scan Checklist-DDPM/PA's monitor and assure lockable bedroom doors through their visits
- ✓ December 2016-Administrative Code updates

Setting Requirements

Lockable doors cont.

- ✓ Public landlords not required to comply
- ✓ Applies if someone lives alone as staff are present
- ✓ If not wanted by the individual after informed of the right-document in plan
- ✓ Type of door lock is based on individual's preferences and/or needs
- ✓ Individual not able to lock or unlock a door; team must discuss further and mitigate associated risks

Setting Requirements

- Individuals sharing units have a choice of roommates in that setting
 - ✓ Chooses roommate
 - ✓ Other options pursued if there is dissatisfaction or desire for a new roommate
 - ✓ Individuals know who and how to share concerns

Setting Requirements

- Individuals have the freedom to furnish and decorate their sleeping or living units within the lease or other agreement
 - ✓ Personal items are present (pictures, books, memorabilia, etc..)
 - ✓ Furniture and other household items reflect personal choice, interests, hobbies



Setting Requirements

- C. Individuals have the freedom and support to control their own schedules and activities, and have access to food at any time
 - ✓ Meals/snacks at time & place of choosing
 - ✓ Choose where to sit vs “assigned sitting”
 - ✓ Options for other food items
 - ✓ Meal missed, can have meal at later time
 - ✓ Snacks available throughout the day
 - ✓ Choice in daily activities-when, what, where, etc..



Setting Requirements

- ❑ D. Individuals are able to have visitors of their choosing at any time
 - ✓ Visitors are present, choice in visitors, and not restricted to certain visiting hours or areas

- ❑ E. Setting is physically accessible to the individual
 - ✓ Modifications, ramps, grab bars, etc..



Meeting the Requirements

- ❑ Not appropriate to restrict all individuals because of the needs of one person or for convenience of the provider
- ❑ Individualized vs based on setting
- ❑ Considerations-age appropriate, typical, respecting other housemates
- ❑ Allowing flexibility in scheduling, visitation hours, access to food, etc.
- ❑ Strengths and preferences should be expressed

EXAMPLES NOT MEETING THE REQUIREMENTS

- ❑ Bedtime will be at 10:00pm; wake up at 6:30am
- ❑ If chores are not done no extra activities that day
- ❑ Meals served at 8:00am, noon, and 6:00pm only
- ❑ No food allowed in the bedrooms
- ❑ All checkbooks are kept in the staff office
- ❑ Visiting hours are from 10:00-8:00 only
- ❑ Must ask permission before using the phone
- ❑ Not permitted in certain parts of the home
- ❑ No lock on bedroom door
- ❑ House Rules

Person-Centered Planning Process

Person Centered is

- ❑ Individual leading the process where possible
- ❑ Addressing what is important to the individual
- ❑ Addressing strengths, preferences, needs, and desired outcomes
- ❑ Focus is on the person versus the system
- ❑ “How can we do this” rather why we can’t



Person-Centered Service Process

- Provides necessary information and support to ensure that the individual directs the process to the maximum extent possible, and is enabled to make informed choices and decisions
 - ✓ Individual is empowered & drives the process
 - ✓ Extend possible and desired for the individual
 - ✓ Exposure, education, information & experience = informed choices
 - ✓ Individualized support to engage and direct



Person-Centered Service Process

- Includes people chosen by the individual
 - ✓ family, friends, and others not paid to be there

- Is timely and occurs at times/locations of convenience to the individual
 - ✓ Choice for when and where
 - ✓ Meetings occur in living rooms, church social halls, private homes
 - ✓ Plans occur initially, annually, change in needs, or when requested

You're Invited!

Person-Centered Service Process

- Reflects cultural considerations and conducted by providing information in plain language and in a manner accessible to persons with disabilities and limited English proficient
 - ✓ Meaningful and understandable to individual
 - ✓ No professional jargon
 - ✓ Accessible to those who speak other languages
 - ✓ People First
 - ✓ Includes annual rights/responsibilities by the DDPM

Person-Centered Service Process

- Includes strategies for solving conflict or disagreement
 - ✓ Best as partners, open communication
 - ✓ Conflict resolution skills
 - ✓ Ensure needs, preferences, strengths, outcomes, and supports are reflected

- Includes a method for individuals to request updates to the plan as needed
 - ✓ Verbal or written to either DDPM or agency Program Coordinator
 - ✓ Updates are not dependent only on professional team members
 - ✓ Can occur any time, in addition to at least annually or when needs change

Person-Centered Service Process

- ❑ Offers informed choice to the individual regarding the services and supports they receive and from whom choose services, supports and the service providers
 - ✓ Needs, preferences, and goals considered
 - ✓ Information meaningful and understandable
 - ✓ Completed initially, annually, needs change, or when requested
 - ✓ Providers available and setting options-including option not exclusive to people with same or similar disabilities
 - ✓ Provide tours, opportunities, visits
 - ✓ Choice in services, supports, and providers
 - ✓ Financial resources considered for residential
 - ✓ Choice and options documented in plan



Person-Centered Service Plan Documentation

Person-Centered Service Plan Documentation

- Includes individually identified goals and desired outcomes

- ✓ Includes goals which move individual toward what's most meaningful to them
- ✓ Reflects current desires
- ✓ Relationships, community participation, employment, income and savings, healthcare and wellness, education and others



Person-Centered Service Plan Documentation

- ❑ Reflects individual's strengths and preferences
 - ✓ Likes, dislikes, what works well and doesn't, etc.
 - ✓ Represents what is important to feel happy, content, fulfilled, and satisfied

- ❑ Reflects clinical and support needs as identified through an assessment of functional need
 - ✓ Needs identified through risk assessment, residential assessment, etc.
 - ✓ Includes health services, physical therapy, diabetes monitoring, etc.

Person-Centered Service Plan Documentation

- ❑ Reflects services and supports that will assist the individual to achieve identified goals, and the providers of those services and supports, including natural supports
 - ✓ Document paid and unpaid supports
 - ✓ Document natural supports-provided voluntarily
 - ✓ Describe how assists in services, supports, and achievements of goals



Person-Centered Service Plan Documentation

- Include those services, the purpose or control of which the individual elects to self-direct
 - ✓ DDPM's review self-directed services individual has or may benefit from
 - ✓ Document what used for and how the individual controls aspects of the service

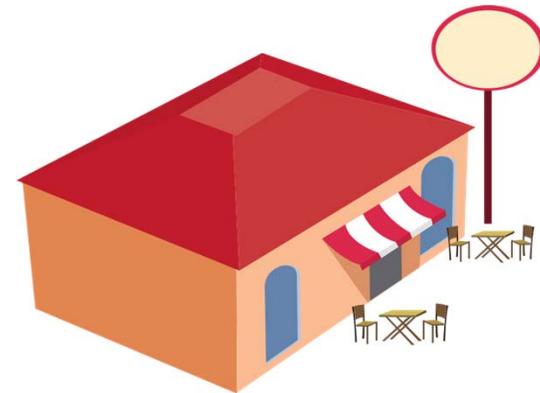


Person-Centered Service Plan Documentation

- ❑ Reflect risk factors and measures in place to minimize them, including individualized back-up plans and strategies when needed
 - ✓ Health and safety concerns and how will be managed
 - ✓ Dignity of risk-right to risk but responsible to minimize; positive safeguarding
 - ✓ Assistance needed to evacuate
 - ✓ Supports in place to respond to emergencies
 - ✓ Specific to individual & specialized equipment

Person-Centered Service Plan Documentation

- Reflect setting in which individual resides is chosen by the individual
 - ✓ Summarize where resides, employed, or attends day services
 - ✓ Options available, considered, visited
 - ✓ Choice selected in residential, day, and employment- Initially, annually, needs change, or when requested
 - ✓ Circumstances prevented any choice, reasons, barriers
 - ✓ Future steps to address preferences
 - ✓ Ensures choices continue to be afforded



Person-Centered Service Plan Documentation

- ❑ Be finalized, agreed to, with the informed consent of the individual in writing, and signed by all individuals and providers responsible for implementation
 - ✓ Signature sheet

- ❑ Be distributed to the individual and other people involved in plan
 - ✓ Copy of plan to individual and others involved

Person-Centered Service Plan Documentation

- ❑ Be understandable to the individual and the individual/s important in supporting him or her
 - ✓ Meaningful to individual
 - ✓ No professional jargon
 - ✓ Accessible to those who speak other languages
 - ✓ People First
 - ✓ Alternative formats-personal “book”, pictures, own words, interpreter, etc.



Person-Centered Service Plan Documentation

- ❑ Identify individual and/or entity responsible for monitoring the plan
 - ✓ OSP Participants-listed after title of Program Coordinator and DDPM

- ❑ Prevent the provision of unnecessary or inappropriate services and supports
 - ✓ Needed services and supports discovered through planning process
 - ✓ Services not needed should not be in plan or authorized

Person-Centered Service Plan Documentation

- ❑ If modifications are made to the following conditions it must be justified and documented in the plan
 - A. Legally enforceable agreement (lease). **Applies to provider-owned residential settings only.**
 - B. Privacy in sleeping or living unit
 - Units have entrance doors lockable, with appropriate staff having keys to doors. **Applies to provider-owned residential settings only.**
 - Individual's sharing units have choice in roommate
 - Freedom to furnish and decorate sleeping or living units
 - C. Control own schedules and activities, and have access to food at any time
 - D. Visitors of choice at any time

Person-Centered Service Plan Documentation

Address and document in plan why cannot be met

- ✓ Situations and reasons are individualized, there is no “listing of reasons”
- ✓ Individuals are unique; considerations for the plan will vary
- ✓ Team process- if an individual is not able to have those rights due to health and safety risks-justification must be substantiated



Person-Centered Service Plan Documentation

1) Identify a specific & individualized assessed need and description of condition related to specific assessed need

- ✓ Cannot be solely based on diagnosis or disability
- ✓ Focus on health & welfare, assessment of need, consider risk management strategies
- ✓ Example-locked pantry and fridge. Evidence and summary entails description of findings from assessments, inability to stop eating when full, and current health implications along with the diagnosis of Prader Willi Syndrome

Person-Centered Service Plan Documentation

2) Document positive interventions/supports and less intrusive methods that have been tried

- ✓ No uniform standard for measuring effectiveness-individualized
- ✓ Best practice-collected prior to or amending modifications

3) Include regular collection and review of data to monitor effectiveness

- ✓ Consider reasonable to evaluate; individual circumstances, weigh the risk; time given for a response

Person-Centered Service Plan Documentation

4) Include established time limits for periodic reviews to determine modification still necessary or can be terminated

- ✓ Regular basis-should never become a “standing order” or continuous” without time limitations



Person-Centered Service Plan Documentation

5) Include informed consent of individual

- ✓ Includes individual's participation in process, views for the intervention, course of actions

6) Include assurance that intervention(s) and supports will cause no harm to individual

- ✓ Statement of assurance with informed consent





“I cannot say whether things will get better if we change; what I can say is they must change if they are to get better.” -*Georg C. Lichtenberg*

Stay focused on the mission and the individuals you provide support to!

For more information

Visit the state website for North Dakota and CMS information on the Final Rule:

<http://www.nd.gov/dhs/services/disabilities/dd.html>

THANK YOU!

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