



Appendix B

04/01/2018

INDIVIDUAL RIGHTS

Every individual receiving services has the same Constitutional Rights as anyone else.

Introduction:

DMH facilities and contracted provider must have rules to make sure an individual has the opportunity to learn and understand their rights, and that no one takes their rights away before they have a chance to speak for themselves or have someone they choose speak for them. This is guaranteed through due process procedures. **9 CSR 45-3.030**

<https://www.sos.mo.gov/cmsimages/adrules/csr/current/9csr/9c45-3.pdf> Individuals receiving services have the same legal rights and responsibilities as any other person unless a court has determined otherwise. Due process must be documented for any limitation of an individual's rights to ensure that rights are adequately protected. This includes some court ordered and guardian placed limitations. This may include physician orders in which the individual does not agree with but are being implemented, such as access to food, medication, treatment, and non-medical related orders.

On the following pages you will find information related to the rights of individuals from the Home and Community Based Federal Regulation (42 CFR 441.301(4)(i)), Missouri Statutes, Missouri Code of State Regulations, and the DMH DD Provider Contracts.

If any of these rights are limited then Due Process must be documented to ensure that the individual's rights are adequately protected.

Contract for Services

Purchase of Service Program for the Division of Developmental Disabilities 3.9 Consumer Rights

<http://dmh.mo.gov/dd/provider/docs/poscontract.pdf>

3.9 Consumer Rights

3.9.1 The contractor shall not limit the rights of a resident or consumer, as defined in RSMo. 630.115, <http://revisor.mo.gov/main/OneSection.aspx?section=630.115&bid=30757&hl=> and shall exercise diligence to protect a consumer's rights in accordance with federal and state statutes, regulations and Department rules and guidelines.

3.9.2 The contractor shall comply with RSMo. 630.120 <http://revisor.mo.gov/main/OneSection.aspx?section=630.120&bid=30758&hl=> And shall not presume that residents and consumers are incompetent or limit their rights, responsibilities or obligations of citizenship as a consequence of receiving evaluation, care, treatment, and habilitation for mental retardation or other developmental disabilities.

3.9.3 The contractor may limit consumer rights as specified in RSMo. 630.110 <http://revisor.mo.gov/main/OneSection.aspx?section=630.110&bid=30756&hl=> only if exercising these rights would be inconsistent with the person's therapeutic care, treatment, habilitation or rehabilitation. The determination of inconsistency shall be made only when the consumer is a clear danger to themselves, others or community property and shall only be made jointly by the contractor and the Regional Office.

Section 630.110, RSMo – Patient’s Rights and Limitations

<http://dmh.mo.gov/constituentservices/docs/CommunityConsumerRights-final.pdf>

Guaranteed to all individual’s receiving services from the Department of Mental Health (Division of Developmental Disabilities and Behavioral Health Services) but may be limited if determined inconsistent with the person’s therapeutic care, treatment, habilitation, or rehabilitation and the safety of other facility or program clients and public safety.

- | |
|---|
| (1) To wear one’s own clothes and to keep and use one’s personal possessions; |
| (2) To keep and be allowed to spend a reasonable sum of one’s own money for canteen expenses and small purchases; |
| (3) To communicate by sealed mail or otherwise with persons including agencies inside or outside the facility; |
| (4) To receive visitors of one’s own choosing at reasonable times; |
| (5) To have reasonable access to a telephone both to make and receive confidential calls; |
| (6) To have access to one’s own mental and medical records; |
| (7) To have opportunities for physical exercise and outdoor recreation; |
| (8) To have reasonable, prompt access to current newspapers, magazines and radio and television programming. |

Section 630.115, RSMo – Guaranteed Rights to all DMH Consumers that cannot be limited.

<http://dmh.mo.gov/constituentservices/docs/CommunityConsumerRights-final.pdf>

Guaranteed to all individual's receiving service from the Department of Mental Health (Divisions of Developmental Disabilities and Behavioral Health Services).

(1) To humane care and treatment;
(2) To the extent that the facilities, equipment and personnel are available, to medical care and treatment in accordance with the highest standards accepted in medical practice;
(3) To safe and sanitary housing;
(4) To not participate in non-therapeutic labor;
(5) To attend or not attend religious services;
(6) To receive prompt evaluation and care, treatment, habilitation or rehabilitation about which the individual is informed insofar that person is capable of understanding;
(7) To be treated with dignity as a human being;
(8) To not be the subject of experimental research without prior written and informed consent or that of a parent, if the person is a minor, or guardian; except that no involuntary committed person shall be subject to experimental research, except as provided by statute;
(9) To decide not to participate or to withdraw from any research at any time for any reason;
(10) To have access to consultation with a private physician at the individual's expense;
(11) To be evaluated, treated or habilitated in the least restrictive environment;
(12) To not be subjected to any hazardous treatment or surgical procedure unless the individual's parent, if the person is a minor, or guardian consents; or unless such treatment or surgical procedure is ordered by a court of competent jurisdiction;
(13) In the case of hazardous treatment or irreversible surgical procedures, to have, upon request, an impartial review prior to implementation, except in case of emergency procedures required for the preservation of life;
(14) To a nourishing, well-balanced and varied diet;
(15) To be free from verbal and physical abuse

9 CSR 45-3.030 – Individual Rights <https://www.sos.mo.gov/cmsimages/adrules/csr/current/9csr/9c45-3.pdf>
 Guaranteed to all individuals who are eligible for services from the Division of Developmental Disabilities

(A) To be treated with respect and dignity as a human being;
(B) To have the same legal rights and responsibilities as any other citizen;
(C) To receive services regardless of race, creed, marital status, national origin, disability, religion, sexual orientation, gender, or age;
(D) To be free from physical, emotional, sexual, and verbal abuse, and financial exploitation;
(E) To receive services and supports to achieve the maximum level of independence;
(F) To have access to all rules, policies, and procedures governing the operations of the Division of DD in an accessible format, and to have those rules, policies, and procedures explained in a manner that is easily understood;
(G) Within one’s financial means, to have a choice where to live and whether or not to share a home with other people;
(H) To direct one’s own person-centered Planning process and to choose others to be included in that process;
(I) To participate fully in the community;
(J) To communicate in any form and to have privacy of communications;
(K) To accept or decline supports and services;
(L) To have freedom of choice among Division of DD approved providers;
(M) To seek employment and work in competitive integrated settings;
(N) To participate or decline participation in any study or experiment;
(O) To choose where to go to church or place of worship, or to refuse to go to a church or place of worship;
(P) To have rights, services, supports, and clinical records regarding services explained in a manner that is easily understood and in an accessible format;
(Q) To have all of an individual’s records maintained in a confidential manner;
(R) To report any violation of one’s rights free from retaliation and without fear of retaliation; and
(S) To be informed on how to make an inquiry, file a complaint or report a violation of one’s rights, and to be assisted in these processes, if requested.

- (1) Adults who do not have a legal guardian have the right to designate a representative to act on one’s behalf for purposes of receiving services from the Division of DD.
- (2) An individual’s rights as outlined in section one (1) may not be restricted, including, but not limited to, by a provider of targeted case management or home and community based services, without due process. Due process under this provision includes the right to be notified and heard on the limitation or restriction, the right to be assisted through external advocacy if an individual disagrees with the limitation or restriction, and the right to be informed of available options to restore the individual’s rights.

9 CSR 45-5.010 2. A through O – Certification of Medicaid Agencies Serving Persons with Developmental Disabilities <http://dmh.mo.gov/dd/provider/docs/certificationsurvey.pdf>

Guaranteed to all individuals receiving the following services from the Division of Developmental Disabilities; residential habilitation, day habilitation, supported employment, or individualized supported living services under the Medicaid Home and Community Based or Nursing Home Reform Waiver program.

Certification Principle

Individuals have information on the rights and responsibilities of citizenship.

- Provider has a document signed and dated by the individual and/or guardian showing that the individual has been informed annually of his or her rights. Sections 630.110 and 630.115 RSMo

Individuals are involved in any process to limit their rights and are assisted through external advocacy efforts.

- Provider has available for review, a signed and dated document that the individual and/or guardian has been involved with the decision to limit his or her rights.
- If rights have been limited, there is documentation that the individual was supported in securing information about possible external advocates. There is documentation that a limitation or restriction was reviewed by a Due Process Committee. Section 630.115 RSMo

Individuals are entitled to due process when limitations are imposed.

- There is an agency policy regarding due process when there are limitations of rights.
- This policy includes the right to an appeal, the appeal process and external advocates.
- Each individual has a signed plan of action in or as an addendum to the Individual Support Plan (ISP) that details, with timelines, how the individual's rights may be restored.
- The contractor may limit consumer rights as specified in RSMo 630.110 only if exercising these rights would be inconsistent with the persons therapeutic care, treatment, habilitation or rehabilitation. The determination of inconsistency shall be made only when the consumer is a clear danger to themselves, others or community property and shall only be made jointly by the contractor and the Regional Office (RO).

Individuals are free to communicate privately.

- An individual's essential personal right of privacy, dignity and respect, and freedom from coercion is protected. Centers for Medicare and Medicaid Services 42 CFR Part 441.710 https://www.govregs.com/regulations/title42_chapterIV_part441_subpartM_section441.710
- Individuals are free to have private communication, without fear of retribution; this includes phone calls, mail, social media/e-mail, texting, text telephone (TTY), visitors and housemates.

Individuals have freedom of movement.

- The individual is integrated in and is supported in accessing the greater community.
- The 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.
- **Setting Characteristics:**
 - Each individual has privacy in their sleeping or living unit and choice of roommates in that setting.
 - Individuals have the freedom to furnish and decorate their sleeping or living units within the lease or other agreement.
 - Setting is physically accessible to the individual.
 - The setting ensures freedom from restraint. Centers for Medicare and Medicaid Services 42 CFR Part 441.710 https://www.govregs.com/regulations/title42_chapterIV_part441_subpartM_section441.710

Staff are trained in preventing, detecting, and reporting abuse and neglect.

- All employees (including contracted), adult household members, relief/respite providers and volunteers receive training on preventing, detecting, and reporting abuse/neglect, prior to service delivery and *at least biennially*.
- Documentation of this training must be available for review.

Abuse and neglect are prohibited by policy.

- The agency has a written policy that clearly states abuse/neglect is prohibited and must include definitions of abuse and neglect consistent with 9 CSR 10-5.
<https://www.sos.mo.gov/cmsimages/adrules/csr/previous/9csr/9csr0902/9c10-5.pdf>

Research must comply with state and federal regulations.

- The agency has a written policy that clearly states any research must comply with state and federal regulations. Section 630.192 RSMo

Guardians and advocates, chosen by the individual, participate in planning and decision making.

- The person centered planning process is driven by the individual and includes people chosen by the individual.
- The planning reflects cultural considerations and uses plain language.
- The planning includes strategies for solving disagreements.
- The planning offers choices to the individual regarding services and supports the individual receives in the home and from whom they receive those services.
- The planning provides a method to request updates.
- The plan is developed annually and occurs at times/locations of convenience to the individual; it is signed and dated by the individual and/or guardian, prior to the implementation of services.
- A copy of the plan must be provided to the individual, his/her representative and provider. Centers for Medicare and Medicaid Services 42 CFR Part 441.725
https://www.govregs.com/regulations/title42_chapterIV_part441_subpartM_section441.725

Individuals are informed of, or are assisted in the process of obtaining a guardian or conservator, or are referred to advocacy services, or both.

- If the individual is interested in having a guardian or conservator or if it is determined the individual is in need of a guardian, the provider will assist the individual with obtaining information about guardianship and advocacy.

Staff maintain all information about individuals in confidence.

- The provider has agency policies regarding confidentiality of information and has a policy and procedure regarding the Rule of Health Insurance Portability and Accountability Act of 1996 (HIPAA). 9 CSR 10-5.220.
- Both policies and procedures are reviewed annually. They must be signed and dated by all employees (including contracted), adult household members, relief/respite providers and volunteers.
- The individual's confidential documents, mail, email, and text telephone (TTY), must be secured.

Individuals have access to their records and staff are available to answer their questions.

- The individual's record is maintained in the service site and is accessible to the individual; this record must contain documentation for at least the previous year. 13 CSR 70-3.210 (4)
<https://www.sos.mo.gov/cmsimages/adrules/csr/current/13csr/13c70-3.pdf>
- Staff is knowledgeable about information maintained in the record.
- The provider will retain individuals' records for at least six years. 13 CSR 70-3.220 (2) (E)
<https://www.sos.mo.gov/cmsimages/adrules/csr/current/13csr/13c70-3.pdf>

- All entries in the individual's record will be signed, titled and dated by the person making the entry.
13 CSR 70-3.030 (2) (A) <https://www.sos.mo.gov/cmsimages/adrules/csr/current/13csr/13c70-3.pdf>

Individuals do not perform unpaid work for which others receive pay.

- Individuals are provided opportunities to seek employment and work in competitive integrated settings. Centers for Medicare and Medicaid Services [42 CFR Part 441.725](#).
- Individuals are not required to work for free or perform activities for which other people would receive pay.
- Individuals participating in Medicaid Waiver employment services, are supported by staff who have received 14 hours of Division approved classroom training and additional six hours of on the job training.

Individuals' rights to a free, appropriate public education are supported.

- Individuals are provided educational opportunities per Individuals with Disabilities Education Act. (IDEA) PL94-142.
- Children of school age are receiving educational opportunities.

Individuals have information on the rights and responsibilities of living in the community.

- Individuals are provided opportunities to seek employment and work in competitive integrated settings, engage in community life, and control personal resources.
- The setting options are identified and documented in the person-centered service plans based on the individuals needs and preferences. Centers for Medicare and Medicaid Services 42 CFR Part 441.725.
- Participation may be documented in the calendar of events, daily logs and/or other agency maintained documentation.

42 CFR 441.301 Contents of Request for a Waiver

https://www.govregs.com/regulations/expand/title42_chapterIV_part441_subpartG_section441.301

Guaranteed to all individuals receiving services from the Division of Developmental Disabilities funded through the Home and Community Based Medicaid Waiver Pro-grams.

Ensure an individual's rights of privacy, dignity, respect, and freedom from coercion and restraint. 42 CFR 441.301(c)(4)(iii)
The personal plan will be understandable to the individual receiving services and supports, and the individuals important in supporting him or her. 42CFR 441.301(c)(2)(vii)
Individuals receive services in the community to the same degree of access as individuals not receiving Medicaid home and community-based services. 42 CFR 44.301(c)(2)(i)
Individuals have the right to privacy in their home, such as locking their bathroom door or talking on the phone. 42 CFR Part 441.710 and 9CSR 45-5.010
Talk with friends/family privately. 42 CFR. § 441.301(c)(4)(iii)
Ensures an individual's rights of privacy, dignity and respect, and freedom from coercion and restraint." 42 CFR 441.530 441.710 (a)(1)(iii)
To seek employment and work in competitive integrated settings; 42 CFR 44.301(c) (2)(i) If the person is freely communicating they do not want to seek employment in another setting this would not be considered a restriction. If the person is communicating they want to work in a community setting and they are being restricted from seeking that employment, then this would be considered a restriction.
The setting in which the individual resides is chosen by the individual. The State must ensure that the setting chosen by the individual 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.
A person has the rights to control their personal resources. 42 C.F.R. § 441.301(c)(4)
The right to a setting that optimizes, but does not regiment, individual initiative, autonomy, and independence in making life choices, including but not limited to daily activities, physical environment, and with whom to interact. 42 CFR 441.301(c)(4)(iv)
Individuals have a choice regarding services and supports, and who provides them. 42 CFR 441.301(c)(4)(v)
Individuals have a choice of roommates. 42 CFR 441.303(c) (4) (B)(2)
Individuals have the freedom and support to control their own schedules and activities, and have access to food at any time. 42 CFR 441.301(c)(4)(vi)(C)
Individuals are able to have visitors of their choosing at any time. 42 CFR 441.301(c)(4)(vi)(D)
The setting is physically accessible to the individual. 42 CFR 441.301(c)(4)(vi)(E)

Other Resources

Division Directive Number 4.200 - Due Process Review Committee for Limitations and Restrictions of Individual Rights <http://dmh.mo.gov/docs/dd/directives/directive4200.pdf>

Due Process Components Guide: <http://dmh.mo.gov/dd/directives/docs/dueprocesscomponentsguide.pdf>

KNOWING YOUR RIGHTS - A guide for individuals with developmental disabilities to understand rights and responsibilities. <http://dmh.mo.gov/dd/manuals/docs/rightsbooklet.pdf>

If a person receiving services has complaints of abuse, neglect or violation or limitation of rights, the person, the person's parents, guardian or authorized representative may contact their service coordinator, state facility representative, or they may contact; Mo Department of Mental Health's Office of Constituent Services at 800-364-9687(Outside of Cole County) 8a-5p 573-751-8088 or TT 573-526-1201 for assistance. 8a-5p

Mo Department of Health and Senior Services 1-800-392-0210

Mo Children's Services 1-800-392-3738

Mo Protection and Advocacy 573-659-0678 / 800-392-8667 / Fax 573-659-0677 MO Relay (TDD) 800-735-2966 app.unit@mo-pa.org

The Division shall report abuse and neglect as mandated by law. Any violation of rights shall constitute, at a minimum, inadequate care and treatment.

People who work for state facilities must report any abuse or neglect that they see or that people report to them.

Quick Guide to Legal Sources Related to Individual Rights

The Code of Federal Regulations (CFR) - the codification of the rules published in the Federal Register by the departments and agencies of the Federal Government.

Missouri Revised Statutes - (RSMo)- state laws that serve as a basis for the Code of State Regulations.

Code of State Regulations – (CSR) - state rules that accompany the established laws set out in RSMo. In Missouri there are 22 Titles in the CSR and Department of Mental Health rules are found in Title 9. The CSR generally have more detail governing how the state laws are to be implemented and requirements that must be met by the department and providers.

The DMH complies with applicable State and Federal civil rights laws, and does not discriminate on the basis of race, color, national origin, age, disability, or sex. Free language assistance available.

ATENCIÓN: si habla español, tiene a su disposición servicios gratuitos de asistencia lingüística. Llame al 1-800-364-9687.

注意: 如果您使用繁體中文，您可以免費獲得語言援助服務。請致電 1-800- 364-9687。