



SERVING, EMPOWERING AND
SUPPORTING MISSOURIANS
TO LIVE THEIR BEST LIVES.

Due Process Review Committee Targeted Training for Support Coordinators

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Due Process: Definition

The Guaranteed opportunity:

- to protest,
- to be heard,
- to be informed,
- to give consent, and
- to have determinations of rights limitations made by an impartial party.

Fundamentals

- 👤 A person with a disability has the same rights, as articulated in the U.S. Constitution and the Missouri State Constitution, *as any other citizen*.
- 👤 It is not fair to restrict the right of one person due to the behavior of someone else.
- 👤 Due Process is the cornerstone of our system of jurisprudence.

Key Elements of Due Process



- 👤 A rights restriction **should only** be put in place after all other less restrictive options have been tried and shown to be ineffective.
- 👤 The person must be informed of the rights limitation.
- 👤 The person must be given the opportunity to voice agreement or disagreement with the restriction.
- 👤 The person or guardian must consent to the restriction.
- 👤 The restriction **must be time-limited**.
- 👤 The person must have **the opportunity to restore their rights**.
- 👤 The restriction must be reviewed by a Due Process Review Committee at a minimum once per year.

HCBS Settings Rule: Individual Rights

- 👤 To be treated with respect and dignity as a human being.
- 👤 To be free from physical, emotional, sexual, and verbal abuse, and financial exploitation.
- 👤 To participate fully in the community.
- 👤 To communicate **in any form and to have privacy of communications.**
- 👤 To choose where to go to church or place of worship, **or to refuse to go to a church or place of worship.**

HCBS Settings Rule: Individual Rights

- 👤 Ensures individual rights of freedom from coercion and restraint.
- 👤 Individual's records are maintained in a confidential manner.
- 👤 Individuals have privacy in their "Unit" (bedroom) **including lockable doors**, choice of roommates, and freedom to furnish or decorate their room.
- 👤 Individuals **may have visitors at any time.**
- 👤 Individuals control their own schedule, **including access to food at any time.**

HCBS Settings Rule: Rights Modification

- 👤 The person's team has responsibility to:
 - 👥 Identify a specific and individualized need.
 - 👥 Document the positive interventions and supports used prior to any modifications to the person's ISP.
 - 👥 Document less intrusive methods of meeting the need that have been tried but were not effective.
 - 👥 Include a clear description of the condition that is directly proportionate to the specific assessed need.

HCBS Settings Rule: Rights Modification

- 👤 The person's team has responsibility to:
 - 👤 Include regular collection and review of data to measure the ongoing effectiveness of the modification.
 - 👤 Establish time limits for periodic reviews to determine if the modification is still necessary or can be terminated (right restored).
 - 👤 Have informed consent of the individual.
 - 👤 Assure that interventions and supports will cause no harm to the individual.

Types of Potential Rights Limitations

Category	Examples (Non-inclusive)
Communication	Social media, the internet, email, text, cell phones, land lines, correspondence
Community	Limitations on where the person can go and/or do in the community
Food	Access to foods, beverages, (locked refrigerator, freezer, pantry, cupboards), intake of calories, carbohydrates, sugar, carbonation, alcohol, caffeine
Media	TV, movies, video games, magazines, news, social media, film ratings, supervised viewing
Personal Possessions	Items that belong to the person, including clothing, items of personal significance, cell phones, electronics, lighters
Privacy	No alone time, audio or video surveillance, removal of bedroom locks
Relationships	Choice of friends, dating, partners, intimacy, sexual activity
Visitation	Supervised visits, conditions when visitors are present, visiting hours

Types of Possible Rights Limitations (Cont.)

Category	Examples (Non-inclusive)
Money	Access to a person's own funds, carrying cash/debit card, making their own purchases
Freedom of Movement	Restraints, barriers within home, locks on doors other than bedrooms, door and window alarms, bed rails
Medication	Not allowed to refuse, hormonal agents for behavior intervention
Sharp Items	Knives, scissors, can lids, pizza cutters, tacks, razors, nails
Intrusive Level of Supervision	1:1, 2:1, line of sight
Tobacco	Cigarettes, pipes, chewing tobacco, vaping
Restriction due to Housemate Behavior	NOT JUSTIFIED FOR THE PERSON WHO DOES NOT HAVE AN ASSESSED NEED.
Restrictive clothing/devices	Body suits, helmets, gait belts, hand mittens, posey vests
Environmental	Thermostat locks, placing items out of a person's reach

Due Process Referral System

- 👤 Online Standardized Referral Form for all Regions
- 👤 Centralized Processes for:
 - 👤 Submitting Referrals
 - 👤 Screening Referrals
 - 👤 Referrals to IRCs and BAT Prohibited Practices
 - 👤 Master Scheduling
 - 👤 Pre/Post Meeting Notifications of Individuals, guardians, Waiver providers, Support Coordinators

Demonstration

Online Referral Form Application

Individual Rights and Due Process Webpage

DMH Website: [Developmental Disabilities | dmh.mo.gov](https://dmh.mo.gov)

Click on Developmental Disabilities

Scroll to the bottom of the screen

Popular Sections



The screenshot shows the 'Popular Sections' area of the DMH website. The 'Quality Programs' tab is selected and highlighted with a red arrow. Below the tabs, the 'Individual Rights and Due Process' link is circled in orange.

Administration	Community Supports	Federal Programs	Regional Offices	Quality Programs	State Operated Programs
 About Us Purpose, mission, and vision		 Director's Office Executive team and communications			 Governance Code, directives, guidelines, and statute

Administration	Community Supports	Federal Programs	Regional Offices	Quality Programs	State Operated Programs
 DD Health Home		 National Core Indicators Missouri and national data			 Integrated Functions Monitoring processes
 Quality Programs Overview		 Health & Safety Process and requirements			 MO Health Risk Screening Tool (HRST) Process
 Missouri Quality Outcomes Quality of Services Review		 Individual Rights and Due Process			 DMH Medication Aide

Individual Rights and Due Process Webpage

Individual Rights and Due Process | dmh.mo.gov

Individual Rights and Due Process

There are occasions when an individual who is supported through the Department of Mental Health may require some type of intervention that limits or restricts their protected rights and/or ability to fully participate in their community and other activities. Due process is the procedure that protects individuals from *undue* restrictions and limitations of their rights.

On these occasions, the individual and their support team submit a plan to be reviewed by a Due Process Review Committee. The plan includes specific components to ensure the individual has been given the opportunity to make an informed decision and to consent to the intervention, and it establishes a clear plan is in place that specifies exactly how this individual will have their rights fully restored. If the Committee determines that due process has *not* occurred, the plan will be referred to an Individual Rights Consultant for education and/or technical assistance.

Due Process Review Committee Referral 

Rights Consultation Request 

Individual Rights Resources 

Determining if a right limitation is in place

- 👤 Does the right restriction include interventions or strategies implemented by a contracted provider staff?
 - 👤 Exceptions:
 - 👤 Individuals with a Forensic Case Monitor
 - 👤 Individuals with a Court Order
 - 👤 Child Specific Contracts

- 👤 Is there a restriction of any rights that are assured to individuals supported by DMH?

Exceptions

Individuals with a DMH Forensic Case Monitor

When a person is released from a psychiatric facility by the court, the Division of Behavioral Health assigns a DMH Forensic Case Monitor (FCM), who is responsible for ensuring the person's compliance with the court-imposed rights limitation.

- 🧑 The court process serves as due process.
- 🧑 The FCM has the authority to impose additional limitations if necessary to facilitate compliance with court-ordered rights limitations.
 - 🏠 If the person believes the additional limitations are unfair or exceed the authority of the FCM they have due process through appeal to the Director of Forensics.
- 🧑 Since the limitation is not beyond what a peer without a disability would experience in the same situation and the forensic system already has due process, people on Conditional Status are exempt from the Division's due process requirement.

Exceptions

Individuals with a Court Order

- Prior to issuing a court order, the court system has certain due process protections it must follow. This includes notice, opportunity to be heard, and other due process considerations. For this reason, absent affirmative evidence that the order is somehow in derogation of client rights, the due process review committee can assume a court order satisfies due process requirements.
- DMH, including the person's inter-disciplinary team, should note the court order in the Individualized Support Plan and, every year during review, document continued efforts to work with the guardian to review any limitation in place to discuss whether they remain appropriate.

Exceptions



Child Specific Contracts

- Youth in Child-Specific Agreements funded through Children's Division does not require a due process review through DD.
- *Any limitations necessary for youth with a Child Specific Contract in place that also limit the rights of another individual living in the same home or receiving supports in the same setting that are funded through DD must be addressed and submitted for review by the DPRC.*

Exceptions



Natural Homes

- Limitations imposed in the family home by natural support or family members are not required to go through due process. Staff may provide a Division funded service to the individual in the home but must not engage in a practice or utilize any device that imposes a restriction during the delivery of services.
- This does not preclude staff from their mandated reporter responsibilities if the restriction could be considered abuse or neglect.

Right Limitations

- 👤 When a person has a proposed restriction of rights, it is up to the individual's Support Coordinator and service provider to ensure the least restrictive interventions have been tried first and Due Process has been afforded to the individual.
- 👤 Information on the proposed restriction covering all elements of due process **must be** included in their Individualized Support Plan (ISP).
- 👤 The proposed restriction is then referred to the Due Process Review Committee.

Right Limitations



Emergency Restriction - Restriction(s) imposed due to emergency circumstances where there is an imminent threat of harm to the individual or others.

Right Limitations

Ad-Hoc Review Panel:

- 🧑 Conducts a review within **72 calendar** hours
- 🧑 Reviews the following:
 - 🏠 Justification, Plan for immediate action, Conditions, Informed Consent, Assurance that the invention will cause no harm, Assurance that the invention is not a Prohibited Practice, Date of team meeting, and timelines and person(s) responsible for submission of complete DPRC referral (within 30 calendar days)

Required Components of Due Process

- 👤 Justification
- 👤 Conditions
- 👤 Teaching/Support Strategies
- 👤 Monitoring Methods
- 👤 Assurance that interventions and supports will cause no harm to the person
- 👤 Criteria for Restoration
- 👤 Informed Consent
- 👤 Review Schedule
- 👤 Notice of Due Process

Justification

- 👤 Describe the limitation
- 👤 “Document less intrusive methods of meeting the need that have been tried but did not work.” (HCBS Rule)([42 CFR 441.301\(c\)\(2\)\(xiii\)\(c\)\(2014\) pp. 3030](#))
- 👤 Identify a specific and individualized assessed need
- 👤 Explain the reason the limitation is being put in place
- 👤 Explain why the limitations are necessary to keep the person safe or others safe
- 👤 Describe any historical pattern or significant situation which has occurred that would justify a limitation
- 👤 Include a summary of current data including the source of the data which supports the need for the limitation

Justification

Do	Don't
<ul style="list-style-type: none"> ▪ Document the specific less intrusive methods of meeting the need that have been tried but did not work. ▪ Include a description of the individual's responses to those methods. ▪ Identify a specific and individualized assessed need. ▪ Explain the reason the restriction is being put in place. 	<ul style="list-style-type: none"> ▪ State simply "We talked to him about it". ▪ Describe previous methods in general terms without detail of what was tried and for how long. ▪ Impose a restriction on the individual based on the need of a housemate. ▪ State "It's for safety reasons" without additional detail.

Justification

Do	Don't
<ul style="list-style-type: none"> ▪ Explain if the restriction is necessary to keep the person safe or others safe. ▪ Describe how the restriction is necessary to keep the person safe or others safe. ▪ Describe any historical pattern/significant situation which has occurred that justifies the restriction. ▪ Include a current data summary, including data sources supporting the need for restriction. 	<ul style="list-style-type: none"> ▪ State “For safety reasons” without additional detail. ▪ Forget to explain in detail how this is needed to keep the person and others safe. ▪ State “Has a history of sexual abuse”. ▪ State “He has made some progress”.

Conditions

- 👤 Explain where the limitation will be imposed (i.e., only at home, in the community, day program, in kitchen, etc.)
- 👤 Include a clear description to the condition that is directly proportionate to the specific assessed need. ([42 CFR 441.301\(c\)\(2\)\(xiii\)\(D\)\(2014\) pp.3030](#))
- 👤 Explain when the limitation will be imposed (i.e., at all times, in the mornings, after/before a specific event or situation, if family present, etc.)

Conditions

Do	Don't
<ul style="list-style-type: none"> ▪ Explain the specific location(s) where the restriction will be imposed. ▪ Explain the specific times or time periods when the restriction will be imposed. ▪ Ensure that the restriction is consistent across relevant settings. 	<ul style="list-style-type: none"> ▪ State “Everywhere”. ▪ State that the restriction will be imposed at staff discretion. ▪ Forget how the restriction in one setting may affect the person in other settings they use.

Teaching or Support Strategies



- 👤 Outcomes/Strategies that are being taught to help an individual develop skills in order to overcome the need for this limitation.
- 👤 Document the positive interventions and supports used prior to any modifications to the ISP. [42 CFR 441.301\(c\)\(2\)\(xiii\)\(c\)\(2014\) pp. 3030](#)
- 👤 Provide evidence that this type of teaching/intervention has worked in the past and by what method the individual learns best.
- 👤 If there are restrictive interventions that are required to keep the person or others safe and teaching strategies have not been identified, then the supports need to be identified, in the Individual Support Plan, along with efforts that are being explored to support the person in the least restrictive way.
- 👤 Document who is responsible for the training of the strategies.

Teaching or Support Strategies

Do	Don't
<ul style="list-style-type: none"> ▪ State the Outcomes/Strategies that are being taught to help an individual develop skills in order to overcome the need for this restriction. ▪ Document the positive interventions and supports used prior to any modifications to the ISP. ▪ Provide evidence that this type of teaching/intervention has worked in the past and by what method the individual learns best. 	<ul style="list-style-type: none"> ▪ Include teaching and support strategies for staff instead of for the person. ▪ State that the individual does not have the cognitive ability to learn. ▪ State “We tell him he’s doing good”. ▪ Respond in general terms of what has worked in the past and what methods are effective in the person’s learning.

Teaching or Support Strategies

Do	Don't
<ul style="list-style-type: none"> ▪ If there are restrictive interventions that are required to keep the person or others safe and teaching strategies have not been identified, then the supports need to be identified, in the Individual Support Plan, along with efforts that are being explored to support the person in the least restrictive way. ▪ Document who is responsible for the training of the strategies. 	<ul style="list-style-type: none"> ▪ State that there are no resources in the person's region without identification of supports and efforts under exploration. ▪ Forget to identify the person/title of who will be responsible to conduct the training.

Monitoring

- 👤 Include a regular collection and review of data to measure the ongoing effectiveness of the modifications. [42 CFR 441.301\(c\)\(2\)\(xiii\)\(c\)\(2014\) pp. 3030](#)
- 👤 Information on data collection methods: identify the person(s)/title(s) of who is responsible for collecting and recording the data.
- 👤 Location of data: Outcome data sheets, MAR, Progress Notes, etc.
- 👤 Frequency of documentation: once/twice daily, weekly, monthly, etc.
- 👤 Team Review: frequency of data review by the team or team members (Support Coordinators, Behavior Analyst, Program Manager, etc.)

Monitoring

Do	Don't
<ul style="list-style-type: none"> ▪ Include: <ul style="list-style-type: none"> ▪ Regular collection and review of data to measure the ongoing effectiveness of the modifications. ▪ Information on data collection methods (responsible party for documenting). ▪ Location of data: data sheets, MAR, Progress Notes, etc. ▪ Frequency of documentation: daily, weekly, monthly, etc. ▪ Data review schedule for the team. 	<ul style="list-style-type: none"> ▪ Use general instead of specific, measurable terms for data collection. ▪ Identify only “Staff” as responsible for documentation., ▪ State “House”. ▪ Forget to be specific in stating frequency. ▪ State that the team will review data as needed.

Assurance of No Harm

👤 Include an assurance that interventions and supports will cause no harm* to the individual. [42 CFR 441.301\(c\)\(2\)\(xiii\)\(c\)\(2014\) pp. 3030](#)

👤 What risks did the team consider to determine the intervention's degree of harm?

👤 Where is this documented?

*** Physical, Emotional, and Social Harm**

Assurance of No Harm

Do	Don't
<ul style="list-style-type: none"> ▪ Include an assurance that interventions and supports will cause no harm to the individual. ▪ Have the team identify and consider risks to determine the intervention's degree of harm. ▪ Document the team's determinations in the ISP. 	<ul style="list-style-type: none"> ▪ Include a standard statement that only states that the intervention will cause the person no harm. ▪ Forget to consider <i>physical, emotional, and social</i> risks of the proposed intervention. ▪ Forget to include the details of the team discussion in ISP documentation.

Criteria for Restoration

Restoration means Removing the Restriction

 How will the team know that the individual no longer requires the restriction?

 What is required of the individual, environment, team?

 How will its achievement be measured?

Restoration **does not mean**

 The individual having to start over at initial step of a fading plan.

 Establishing unreasonable criteria, e.g. zero incidences for 12 consecutive months.

 The right can never be restored.

Criteria for Restoration

- 👤 Describe what it will take for the restriction to be lifted.
- 👤 The criterion needs to be in specific observable and measurable terms (i.e., if the individual has three consecutive months of no attempts to elope, chimes will be removed from the exterior door).
- 👤 May include a fading plan.

Criteria for Restoration

Do	Don't
<ul style="list-style-type: none"> ▪ State criteria in measurable terms. ▪ Ensure that criteria is reasonable. ▪ Include steps for the person to achieve degrees of success. 	<ul style="list-style-type: none"> ▪ Use terms such as “demonstrates an understanding of internet safety” or “can show that he understands the consequences of his actions”. ▪ Require the individual to essentially be perfect for 12 out of 12 consecutive months. ▪ Include a statement that when the person meets criteria, the team will meet to determine if the restriction can be restored. ▪ State that the right can never be restored.

Informed Consent

- ❑ CSR 445-3.090: Consent for treatment based on certain basic elements that include:
 - an understandable ***explanation and purpose of the procedure*** to be followed;
 - a description of ***physical, emotional, or emotional discomfort or risk*** to be expected;
 - an offer to ***answer any inquiries*** concerning the procedure; and
 - an explanation that ***at any time consent can be rescinded***
- ❑ Informed consent should be obtained from the individual, or the guardian for an individual who has a guardian.
- ❑ ***Every effort should be made to obtain informed agreement from individuals with guardians.***

Informed Consent

- 👤 Were all risks of the restrictive interventions reviewed with the person/guardian as part of the consent process?
- 👤 Did the person/guardian have an opportunity to ask questions?
- 👤 Was the person/guardian informed that they may withdraw consent at any time?
- 👤 Where is the consent documented?

Informed Consent

Do	Don't
<ul style="list-style-type: none"> ▪ Provide the specific restriction proposed. ▪ Ensure the individual and guardian are informed of the intervention and all attendant risks. ▪ Ensure the individual and guardian have the opportunity to ask questions about the intervention. ▪ Ensure the individual and guardian are informed that they can rescind consent at any time. ▪ Document the consent in the ISP. ▪ Include the written, dated consent document in the individual's record and attach to the Referral Form. 	<ul style="list-style-type: none"> ▪ Submit the ISP Authorization Page Signature as Informed Consent.

Review Schedule

- 👤 Include established time limits for periodic team review to determine if the restriction is still necessary or can be terminated. [42 CFR 441.301\(c\)\(2\)\(xiii\)\(c\)\(2014\) pp. 3030](#)
- 👤 State how often the team will submit the plan to the Due Process Review Committee for review (**minimum annually**).

Review Schedule

Do	Don't
<ul style="list-style-type: none">▪ Include established time limits for periodic team review to determine if the restriction is still necessary or can be terminated.▪ State how often the team will submit the plan to the Due Process Review Committee for review (minimum annually).	<ul style="list-style-type: none">▪ State “As needed” or “Intermittently”.▪ Assume that all limitations should be reviewed only annually.

Notice of Due Process



- 👤 Document that the individual and guardian are aware of the limitations, were part of the planning process to develop interventions, know they have a right to due process, and have information on what to do if they do not agree with the limitations or interventions.

Notice of Due Process

Do	Don't
<ul style="list-style-type: none"><li data-bbox="112 472 942 911">▪ Document how the individual and guardian were made aware of the limitations, were part of the planning process to develop interventions, know they have a right to due process, and have information on what to do if they do not agree with the limitations or interventions.<li data-bbox="112 986 904 1082">▪ Document the date of the Notice and the individual and guardian's input.	<ul style="list-style-type: none"><li data-bbox="985 472 1806 568">▪ Use a standard statement quoting only the statement on the left.

Authorities



- 👤 [Guidance for Achieving Home and Community Based Services \(HCBS\) Compliance | dmh.mo.gov](#) - Home and Community Based Services: Waiver Requirements
- 👤 [9 CSR 45-3.030](#) - Individual Rights
- 👤 [Contract For Services](#) - Purchase of Services Program for the Division of DD 3.9 Consumer Rights

Fundamentals



- 👤 A person with a disability has the same rights, as articulated in the U.S. Constitution and the Missouri State Constitution, *as any other citizen.*
- 👤 It is not fair to restrict the right of one person due to the behavior of someone else.
- 👤 Due Process is the cornerstone of our system of jurisprudence.



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