

Wyoming Administrative Rules

Health, Department of

Wyoming Life Resource Center

Chapter 1: General Provisions

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CHAPTER 1

Rules and Regulations for the Wyoming Life Resource Center

General Provisions

Section 1. Authority. This Chapter is promulgated by the Department of Health to implement the Life Resource Center Act at W.S. § 25-5-101, *et seq.*; establishment of state institutions at W.S. § 25-1-101, *et seq.*; duties and powers of director of department at W.S. § 9-2-106, and pursuant to the Wyoming Administrative Procedure Act at W.S. § 16-3-101, *et seq.* The Director shall appoint a program manager to administer the Center under the direction of the Administrator at W.S. § 25-5-108. Code of Federal Regulations (42 CFR 440.150-483.480(d)(5)), rules and regulations for licensure of Immediate Care Facilities for the Mentally Retarded.

Section 2. Purpose. The Wyoming Life Resource Center (the Center) established; purpose W.S. § 25-5-103; Short Title W.S. § 25-5-101. The provisions contained in this Chapter shall be subordinate to the Life Resource Center Act and, where applicable, the Code of Federal Regulations, Chapter 42, Sections 440.150-483(d)(5), rules and regulations for licensure of Immediate Care Facilities for the Mentally Retarded.

(a) This Chapter is adopted to provide definitions and a philosophy for all Wyoming Life Resource Center Rules and outlining professional standards for personnel employed at the Center.

(b) The Center may issue manuals, bulletins, or both, to affected parties to interpret the provisions of these Rules. Such manuals and bulletins shall be consistent with and reflect the Rules contained in these Wyoming Life Resource Center Rules, Chapters 1, 2, 3, 4, 5 and 6. The provisions contained in manuals or bulletins shall be subordinate to the provisions of these Chapters.

Section 3. Definitions. The following definitions shall apply in the interpretation and enforcement of these rules. Where the context in which words are used in these rules indicates that such is the intent, words in the singular number shall include the plural and vice versa. Throughout these rules, gender pronouns are used interchangeably. The drafters have attempted to utilize each gender pronoun in equal numbers, in random distribution. Words in each gender include individuals of the other gender.

(a) “Acquired Brain Injury” means any combination of focal and diffuse central nervous system dysfunction, at the brain stem level and above, acquired after birth through the interaction of any external forces and the body, oxygen deprivation, infection, toxicity, surgery, or vascular disorders not associated with aging.

(b) “Active treatment” means a program which includes aggressive, consistent implementation of a program of specialized and generic training, treatment, health services, and related services that is directed toward:

(i) The acquisition of the behaviors necessary for the client to function with as much self determination and independence as possible; and

(ii) The prevention or deceleration of regression or loss of current optimal functional status.

(c) “Adaptive behavior” means the collection of conceptual, social and practical skills that have been learned by people in order to function in their everyday lives.

(d) “Administrator” means the administrator of the Division.

(e) “Admissions request form” means the form specified by the Center which an applicant or legally authorized representative completes and submits to the Center for admission consideration.

(f) “Adult” means a person eighteen (18) years of age or older for purposes of the Center.

(g) “Adult Developmental Disabilities Home and Community Based Waiver” means the Adult Developmental Disabilities Home and Community Based Waiver submitted to and approved by the Centers for Medicare and Medicaid Services pursuant to Section 1915(c) of the Social Security Act.

(h) “Adverse action” means the termination, reduction, or denial of services provided to a Client; the denial or withdrawal of admission certification; the discharge from services at the Center; or other action which, by law, may result in a contested case hearing before the Agency. An adverse action shall not include:

(i) The decision whether or not to offer a specific type of service at the Center;

(ii) The staffing decisions made by the Agency in its ordinary course of business; and

(iii) The reduction or denial of services provided or any other action caused solely by a change in Federal or State statutes or regulations.

(i) “Affidavit” means a written notarized statement of facts made voluntarily under oath.

(j) “Agency” means the Department, the Division, or Center, whichever is required by law to act under the circumstances specified.

(k) “Applicant” means an individual who is requesting services.

(l) “Application” means a written statement, in the form specified by the Division that is submitted to the Division, in which an individual indicates that he is interested in receiving covered services. An application may be submitted by one person on behalf of another, but shall have the legally authorized representative’s signature, if applicable.

(m) “Assistive technology device” and “assistive technology service” mean, as defined in 42 U.S.C. 15002, any item, piece of equipment or product system, whether acquired commercially, modified or customized, that is used to increase, maintain, or improve functional capabilities of individuals.

(n) “Audiologist” means a person licensed to practice audiology pursuant to W.S. § 33-33-102(a)(v), 42 CFR 483.430(b)(5)(vii).

(o) “Center” means the Wyoming Life Resource Center in Lander, Wyoming.

(p) “Centers for Medicare and Medicaid Services (CMS)” means the Centers for Medicare and Medicaid Services of the United States Department of Health and Human Services, its agent, designee, or successor.

(q) “Certified mail” means mail sent certified, return receipt requested, as provided by the United States Postal Service, or delivery via a commercial delivery service, which provides tracking of the communication and written documentation of its delivery. "Certified mail" may include hand delivery, where a statement confirming delivery is placed in a client’s file, but does not include communication by facsimile transmission, telephone, or electronic mail.

(r) “Certified Nursing Assistant/Nurse Aide” means a person certified to practice nursing assistance pursuant to W.S. § 33-21-120(a)(xii), 42 CFR 483.460(d)(5).

(s) “Certification” meets federal standards of participation and a valid agreement between the Medicaid agency and the Center.

(t) “Child” means any person under the age of eighteen (18) years.

(u) “Client” means any person who has a disability and has been determined eligible pursuant to department rules and regulations and is receiving services from one (1) of the Center’s programs.

(v) “Client services” means diagnosis, education, training, and care of persons who have been admitted to the Center.

(w) “Contestant” means a client, applicant, or legally authorized representative who requests reconsideration or a hearing.

(x) “Department” means the State Department of Health, its agent, designee, or successor.

(y) “Developmental Disability,” as defined in federal law (42 U.S.C. 15002), means a severe, chronic disability of an individual that:

(i) Is attributable to a mental or physical impairment or combination of mental and physical impairments;

(ii) Is manifested before the individual attains the age of twenty-two (22) years;

(iii) Is likely to continue indefinitely;

(iv) Results in substantial functional limitations in three (3) or more of the following areas of major life activity:

(A) Self-care;

(B) Receptive and expressive language;

(C) Learning;

(D) Mobility;

(E) Self-direction;

(F) Capacity for independent living; and

(G) Economic self-sufficiency.

(v) Reflects the individual's need for a combination and sequence of special, interdisciplinary, or generic services, individualized supports, or other forms of assistance that are of lifelong or extended duration and are individually planned and coordinated.

(z) “Dietician” means a person who is registered as a dietician by the Commission on Dietetic Registration, and must be eligible for registration by the American Dietetic Association.

(aa) “Director” means the Director of the Department, or the Director's agent, designee, or successor.

(bb) “Direct Support Professional” means a person who provides services to a client.

(cc) “Disability” means a developmental disability, as defined in 42 U.S.C. 15002, or a disability resulting from an acquired brain injury.

(dd) “Division” means the Developmental Disabilities Division of the Department of Health, its agent, designee, or successor.

(ee) “Drug used as a restraint” means any drug that:

(i) Is administered to manage an individual’s behavior in a way that reduces the safety risk to the individual or others;

(ii) Has the temporary effect of restricting the individual’s freedom of movement; and

(iii) Is not a standard treatment for the individual’s medical or psychiatric condition.

(ff) “Emergency” means a circumstance or set of circumstances or the resulting state that calls for immediate action or an urgent need for assistance or relief.

(gg) “Funding” means the combination of state, federal, and private dollars available to pay for covered services.

(hh) “Hearing” means an appeal of Agency action to the Department pursuant to the procedures set forth in this Chapter and as otherwise required by law. Action subject to appeal shall include a determination of the recommended or most appropriate services, least restrictive or most integrated environment or informed choice; the denial, revocation, restriction, or suspension of services; or other action affecting the legal rights or privileges of a client and required by law to be determined after notice and an opportunity for a hearing. The following action shall not be subject to a hearing:

(i) An appeal of specific services offered at the Center where such appeal involves services not otherwise provided at the Center;

(ii) The staffing decisions made by the Agency in its ordinary course of business;

(iii) An appeal from any action caused solely by a change in Federal or State statutes or regulations; and

(iv) The decision, pursuant to W.S. § 25-5-124(a), to discharge a client from the Center. Such decisions shall be immediately appealable in writing to the Director of the Wyoming Department of Health who, upon receipt of such request, shall review the client's record and issue a final decision within thirty (30) days of receipt of such request as required by W.S. § 25-5-124(b).

(ii) "Hearing officer" means the individual designated by the Director to serve as the presiding officer at a hearing held under this Chapter.

(jj) "Individual program plan" means a written statement of long-term and short-term goals and strategies for providing specially designed services to meet each client's individual educational, physical, emotional, and training needs.

(kk) "Informed choice" means making a decision based on adequate information. As appropriate, such information may include provider methods, costs, duration, accessibility, customer satisfaction, probabilities, sources, and consequences.

(ll) "Intellectual disability" means significantly sub-average general intellectual functioning with concurrent deficits in adaptive behavior manifested during the developmental period. "Intellectually disabled" means a person with an intellectual disability.

(mm) "Interdisciplinary team" means a group that represents the person, the person's family or legally authorized representative, and the professions, disciplines or service areas that are relevant to identifying the client's needs, as described in the comprehensive functional assessments and program design.

(nn) "Intermediate Care Facility for People with Intellectual Disabilities" means an intermediate care facility for the mentally retarded or intermediate care facility for people with mental retardation as those phrases are used in applicable federal statutes, rules and regulations.

(oo) "Inventory for Client and Agency Planning" means an instrument used by the Division to help determine eligibility and to determine the needs of the client, available from Riverside Publishing, its successor, or designee.

(pp) "Least restrictive environment" means the program, service and location that least inhibits a person's freedom of movement, informed decision making and participation in community life while achieving the purposes of habilitation and treatment, which best meet the needs of the person. The determination of least restrictive environment shall be individualized, based on a person's need for medical, therapeutic, rehabilitative, and developmental services, and as a result of informed choice

of the person or if the person is a minor or a ward, his parent or legally authorized representative.

(qq) “Legally authorized representative” means:

- (i) Minor child's parent or legal guardian;
 - (ii) An individual's legal guardian;
 - (iii) An attorney who asserts, in writing, that he represents an individual or entity;
 - (iv) Any other person who is not an employee of the Center and is authorized in writing to act as an agent on behalf of an individual or entity for the purpose of the matter in question;
 - (v) Any person, other than a parent acting on behalf of a minor child or an attorney who represents an individual or entity (such a person must attach to the first document submitted to the Division or Center a copy of a written authorization to act on behalf of the specified individual or entity with respect to the particular matter in question); or
 - (vi) For purposes of this Chapter, a legally authorized representative may at all times act on behalf of the applicant or client to the full extent legally authorized.
- (rr) “Licensed Practical Nurse” means a person licensed to practice practical nursing pursuant to W.S. § 33-21-120(a)(x), 42 CFR 483.460 (d)(1)(4).
- (ss) “Mechanical Restraint” means any device attached or adjacent to a client’s body that he cannot easily move or remove that restricts freedom of movement or normal access to the body.
- (tt) “Medicaid” means medical assistance and services provided pursuant to Title XIX of the Social Security Act and/or the Wyoming Medical Assistance and Services Act. "Medicaid" includes any successor or replacement program enacted by Congress and/or the Wyoming Legislature.
- (uu) “Medicare” means the health insurance program for the aged and disabled established pursuant to Title XVIII of the Social Security Act.
- (vv) “Most appropriate” means an individualized determination of a person’s need for medical, therapeutic, rehabilitative, and developmental services based upon professional assessment and the informed choice of the person or, if the person is a minor or ward, his parent or guardian.

(ww) “Most integrated” means the setting that enables a person with a disability to have access to the same opportunities as a person without disabilities to the fullest extent possible, including opportunities to live, learn, work, recreate, and participate in family and community activities. Determinations of most integrated shall be individualized and based upon professional assessment and the informed choice of the person or, if the person is a minor or ward, his parent or legally authorized representative.

(xx) “Non-Residential services” means the Center may provide outreach and outpatient services to those individuals not admitted to one of the residential programs.

(yy) “Notice” or “Notify” means a written notice sent by certified mail or hand delivered in which the Agency communicates its intent to act in any manner, which may result in a contested case.

(zz) “Occupational Therapist” means a person licensed to practice occupational therapy pursuant to W.S. § 33-40-102(a)(iv), CFR 483.430(b)(5)(i) through (ii).

(aaa) “Person centered planning” means a process directed by a client that identifies a client’s strengths, capacities, preferences, needs, and the services needed to meet those needs. Person centered planning allows a client to exercise choice and control over the process of developing and implementing the individual program plan.

(bbb) “Personal Restraint” means the application of physical force or physical presence without the use of any device, for the purposes of restraining the free movement of the body of the client. The term personal restraint does not include briefly holding, without undue force, a client in order to calm or comfort her, or holding a client’s hand to safely escort her from one area to another.

(ccc) “Pharmacist” means a person licensed to practice pharmacy pursuant to W.S. § 33-24-116 (a)(i through viii).

(ddd) “Preadmission screening assessment” means an evaluation conducted by the screening team using appropriate assessments and tools for determination of eligibility for a program at the Center.

(eee) “Preliminary interdisciplinary team” means a team that represents professions, disciplines, or service areas to assess and evaluate an applicant’s needs prior to admission to the Center.

(fff) “Physical Therapist” means a person licensed to practice physical therapy pursuant to W.S. § 33-25-101(a)(ii), 42 CFR 483.430(b)(5)(iii) through (iv).

(ggg) “Physician” means a person licensed to practice medicine or osteopathy by the Wyoming Board of Medical Examiners or a similar agency in a different state.

(hhh) “Program Manager” means the on-site supervisor and manager of the Center. The definition would also apply to the administrator-on-call when the administrator is not available.

(iii) “Protection and Advocacy Systems, Inc.” means a protection and advocacy system established in accordance with Section 143 (42 U.S.C. 15043).

(jjj) “Provider” means a person or entity that is certified by the Division to furnish covered services and is currently enrolled as a Medicaid home and community based waiver provider.

(kkk) “Psychologist” means a person licensed to practice psychology pursuant to W.S. § 33-27-113(a)(v), 42 CFR 482.430(b)(5)(v).

(lll) “Qualified Intellectual Disabilities Professional” means the person who ensures the client receives those services and interventions identified in the individual program plan. Qualified Intellectual Disabilities Professionals must have at least one (1) year of experience working directly with persons with intellectual or other developmental disabilities and is one of the following: a doctor of medicine, a doctor of osteopathy, a registered nurse, or an individual who holds at least a bachelor’s degree in a professional category designated as a human services professional (including, but not limited to: sociology, special education, rehabilitation counseling, and psychology).

(mmm) “Radiologic technologist” means a person licensed to practice radiologic technology pursuant to W.S. § 33-37-108(a) through (d).

(nnn) “Reconsideration” means the process by which a contestant may request the Center review a contested case before the contestant may request a hearing.

(ooo) “Records” means all documents, in whatever form, in the possession of or subject to the control of the Center, which describe the client’s diagnosis, condition, or treatment, including, but not limited to, the individual program plan.

(ppp) “Registered Nurse” means a person licensed to practice professional nursing pursuant to W.S. § 33-21-120(a)(xi), 42 CFR 483.460(d)(1).

(qqq) “Rehabilitation services” means any services provided for a primary purpose of assisting the rehabilitation of persons with disabilities, including persons with acquired brain injury, including, but not limited to, comprehensive medical evaluations and services, psychological and social services, residential services, and vocational evaluations and training.

(rrr) “Related condition” means a condition that results in a severe, chronic disability affecting an individual which manifests before she reaches age twenty-two (22)

and that is attributable to cerebral palsy, seizure disorder, or any condition other than mental illness that is closely related to mental retardation and that requires similar services, as determined by a licensed psychologist or physician.

(sss) “Respiratory Therapist” means a person licensed as a respiratory care practitioner pursuant to W.S. § 33-43-108(a) through (d).

(ttt) “Restraint,” “Personal Restraint,” “Mechanical Restraint,” or “Drug Used as a Restraint,” as defined in this section.

(uuu) “Screening team” means a group of appropriate professionals, appointed by the Director pursuant to rules and regulations of the department and assigned by the Administrator, to perform preliminary testing and assessment of a person for purposes of determining eligibility for services at the Center.

(vvv) “Services” mean diagnostic, education, training, medical, habilitation, or other services and/or respite, emergency evaluation services, equipment, therapy, or supplies appropriate to meet the needs of a client residing at the Center.

(www) “Speech Pathologist” means a person licensed to practice speech pathology pursuant to W.S. § 33-33-102(a)(iii), CFR 483.430(b)(5)(vii).

(xxx) “Temporary services” means the administrator may admit individuals for services temporarily pursuant to rules promulgated under W.S. § 25-5-105 if the administrator determines a less restrictive environment is appropriate, but unavailable. A client admitted for services temporarily is not subject to W.S. §§ 25-5-114 through 25-5-115 and W.S. § 25-5-121(e). No individual shall be admitted temporarily for services for more than seventy-five (75) days.

(yyy) “Time Out” means the restriction of a client, for a reasonable period of time, to a designated area from which the client is not physically prevented from leaving for the purpose of providing the client an opportunity to regain self-control.

(zzz) “Waiting list” means a list of persons who are eligible for services and who have submitted a completed application, but the services are unavailable because of limits imposed by funding for the Center or waiver. The Division maintains the waiting list.

(aaaa) “Waiver” means the Adult Developmental Disabilities Home and Community Based Waiver, Children’s Home and Community Based Waiver, the Acquired Brain Injury Home and Community Based Waiver, Long-Term Care Waiver, Assisted Living Waiver, or any other subsequent waiver under the Medicaid Rules and Department of Health and submitted to and approved by the Centers for Medicare and Medicaid Services pursuant to Section 1915(c) of the Social Security Act.

Section 4. Philosophy.

(a) All persons possess inalienable rights under Constitutions of the United States and the State of Wyoming. Persons with developmental disabilities also possess the rights outlined in the Developmental Disabilities Assistance and Bill of Rights Act of 2000, 42 U.S.C. 15001.

(b) The Center provides person centered planning and services based on the Center being the least restrictive environment, most integrated setting, and the informed choice of the clients or legally authorized representative.

(c) It is the philosophy of the Division to develop reasonable and enforceable rules for the provision of services to clients.

(d) This Chapter is designed not only to support the philosophy of services, but to also protect the health, welfare, and safety of clients.

Section 5. Protection of Client Rights.

(a) Any limitation or denial of rights will be reviewed by oversight of a committee or committees established at the Center.

(b) A client, parent, family member, or legally authorized representative may file any complaint of rights violations according to the Center's policy.

(c) Appeals for denial of admission, individual program plan decisions, and discharge may be filed in accordance with Wyoming Life Resource Center Rules, Chapter 2, Administrative Hearings.

Section 6. Professional Standards.

(a) The Center will provide each employee with initial and continuing training that enables the employee to perform his or her duties effectively, efficiently, and competently.

(b) The Center will support training for all staff to gain the competencies needed to do their jobs and enable them to provide needed services to their clients.

(c) Professionals employed or contracted by the Center in a professional position will:

(i) Meet all licensing and certification requirements pertinent to the profession;

(ii) Meet the standards of the profession;

- (iii) Meet all other applicable standards by law;
 - (iv) Participate in on going staff development. Professional staff must receive training in their own discipline to assure adequate delivery of services and be aware of developments in their field; and
 - (v) Provide training to others at the Center.
- (d) A record of all pertinent training will be maintained by the Center for all employees.

Section 7. Data Reporting Process for Demographic Information. Rules and regulations; reports, W.S. § 25-5-105; Standard: Program Documentation, CFR 483.440(e)(1) through (2).

(a) Administrator shall establish data reporting processes and report monthly to the Director the number of persons served by the Center, identified by service category, and the services provided to those persons.

(b) By October 1 of each year, the Director shall report to the Joint Labor, Health and Social services Interim Committee and the Joint Appropriations Interim Committee regarding the number of clients served by the Center, the reason for provision of services to each client at the Center rather than in a community program, the staff to client ratio, and the total State and Federal costs of all services provided to clients, including the current Medicaid reimbursement rate for intermediate care facilities for people with intellectual disabilities.

Section 8. Interpretation of Chapter.

(a) The order in which the provisions of this Chapter appear is not to be construed to mean that any one provision is more or less important than any other provision.

(b) The text of this Chapter shall control the titles of its various provisions.

Section 9. Superseding Effect. This Chapter supersedes all prior rules or policy statements issued by the Center, including manuals and provider bulletins, which are inconsistent with this Chapter, except Chapter 1, Rules for Individually Selected Service Coordinators of the Rules of the Developmental Disabilities Division, which remains in effect.

Section 10. Severability. If any portion of this Chapter is found to be invalid or unenforceable, the remainder shall continue in full force and effect.