

Individuals' Participation in Decisions about Community Participation: Requirements for Regulatory Compliance

ODP Announcement 24-061

AUDIENCE:

Office of Developmental Programs' (ODP) providers that render Community Participation Support and/or Day Habilitation in facilities licensed under Chapter 2380 or Chapter 2390ⁱ.

PURPOSE:

The purpose of this announcement is to inform providers of:

- Federal requirements for individuals to be involved in decision-making about desired community activities;
- How these requirements relate to regulatory requirements in Chapters 2380, 2390, and 6100; and,
- What must be done to comply with the requirements.

DISCUSSION:

The Centers for Medicare and Medicaid Services (CMS) requires all states to ensure that individuals are given the opportunity to be actively involved in decision-making about community participation and activities. This is a condition of continued participation in the Medicaid program.

The right of all individuals to make choices and accept risks is guaranteed by Chapters 2380, 2390, and 6100ⁱⁱ. This includes, but is not limited to, the right to be actively involved in decision-making about community participation and activities.

ⁱ Day Habilitation in the Adult Autism Waiver cannot be provided in a facility licensed under Chapter 2390.

ⁱⁱ See 55 Pa.Code § 2380.21(l), § 2390.21(l), and § 6100.182(e)

Regulations require providers to educate, assist, and provide the accommodation necessary for the individual to make choices and understand the individual's rights. Making an informed choice involves more than asking someone if they want to do something or a simple yes-or-no conversation. Informed choice involves giving individuals information and opportunities to have experiences upon which to base their choices. By providing an individual with the knowledge and experience to make an informed choice they can be supported to exercise their individual rights to make choices and accept risks.

ACTION REQUIRED:

Effective **July 1, 2024**, providers that render Community Participation Support and/or Day Habilitation in Chapter 2380 or Chapter 2390 programs must have conversations with all individuals they support relating to their preferred community participation and activities at least quarterly. At least one conversation must occur between July 1, 2024, and September 30, 2024.

Documentation of these conversations must be maintained in each individual's record. There is no required format for this documentation. Documentation must include at a minimum:

- Name of the individual
- Name of the persons involved in discussion
- Date of discussion and summary of discussed content

Documentation must be made available at the request of the Department. The Department is aware that providers who already engage in this practice, document the discussion in quarterly progress notes required by 6100.227. This is an acceptable practice.

ODP's licensing staff will review documentation of the conversations during licensing inspections beginning **October 1, 2024**. Failure to complete and have documentation of at least one conversation by that date will result in both licensing and Chapter 6100 violations.

QUARTERLY CONVERSATION RECOMMENDATIONS

There are no required questions or topics that must be addressed during the quarterly conversations. ODP encourages providers to address topics and activities such as:

- The types of community activities each individual is interested in and why they find them appealing.
- The information and experiences individuals need to make informed choices about community participation.
- The potential risks associated with different community activities and how individuals can manage and be supported to manage those risks.
- What support individuals need to make decisions without influencing their choices.
- How individuals can be supported to integrate into community activities that align with their interests and abilities.
- Setting realistic and achievable goals for community participation and discussing steps to reach those goals.
- Addressing barriers individuals may face in participating in community activities and brainstorming solutions with the individual's team.
- Reviewing the rights of individuals regarding community participation and their responsibilities in exercising those rights.

- Creation of a feedback mechanism for individuals to express their satisfaction or concerns about the community activities they engage in, including a method for individuals to provide such feedback anonymously.

When individuals participate in community activities their preferences, interests, and goals may change. Providers are encouraged to discuss the individual's experience to help the individual make informed decisions about future activities. This includes discussion about what the individual liked about the activity and why they liked it as well as what the individual disliked about the activity and why they disliked it. This will also help the provider with researching future community activities for the individual to participate in.

CONTACT

Please contact your appropriate ODP Regional Licensing Office with questions about this announcement.