

**GUARDIANSHIP FOR ADULT PARTICIPANTS AND THE HOME AND COMMUNITY
BASED SERVICES (HCBS) FINAL RULE
FREQUENTLY ASKED QUESTIONS**

Question	Answer
Do the new rights and requirements under the HCBS rules supersede the decision-making authority of a legal guardian for a participant?	No. Unless otherwise indicated in the particular individual’s guardianship documents, the legal guardian retains full decision-making authority for the participant pursuant to Title 15, Chapter 5 , and Title 66, Chapter 4 of Idaho Statute, as applicable.
If the new rules under HCBS do not supersede the decision-making authority of a legal guardian, can a legal guardian direct a provider to restrict a participant’s HCBS rights?	No, not if the provider is funded with HCBS dollars. A provider may only restrict or limit HCBS setting qualities if there is a health or safety risk to the participant. A provider may not restrict HCBS setting qualities based on the personal preferences, beliefs, or values of the guardian. If a guardian wishes to impose restrictions or limitations unrelated to health or safety risks, then the guardian and participant must identify a funding source other than Medicaid HCBS.
Will proposed IDAPA rules clarify the role of the guardian in relation to the HCBS changes?	<p>Yes, there is language in the new HCBS section in the proposed IDAPA rule that clarifies the role of the guardian. Please see IDAPA 16.03.10.312.02 in the proposed rules:</p> <p>311. HCBS REQUIREMENTS AND DECISION-MAKING AUTHORITY. HCBS requirements, contained in Sections 312 through Sections 317 of these rules, do not supersede decision-making authority legally assigned to another individual or entity on the participant's behalf. This includes:</p> <ul style="list-style-type: none"> 01. A Representative Payee Appointed by the Social Security Administration; 02. Court-imposed Restrictions Related to Probation or Parole; 03. Court-imposed Restrictions When Committed to the Director Of Health And Welfare; and 04. Legal Guardians Who Retain Full Decision-making Authority. It is presumed that the parent or parents of participants birth through seventeen

Question	Answer
	(17) years of age have full decision-making authority unless the minor child has another legally assigned decision-making authority.
My loved one receives HCBS. Are there ways other than becoming a legal guardian that I can help support him or her in exercising these participant rights under HCBS?	Make sure you understand the HCBS rights and talk to your loved one about them – the Department will be publishing educational materials about HCBS for participants in the near future. You can use these materials to make yourself familiar with these rights and talk to your loved one about them. If you feel that he or she might still need some assistance in exercising their HCBS rights and making decisions, there are alternative ways that participants can be supported in learning to make decisions on their own. The National Resource Center for Supported Decision-Making has a number of good resources to help guide family members and loved ones in helping people who may need support in making life choices. You can also visit DisAbility Rights Idaho and the Idaho Judicial Branch websites for information specific to Idaho.
The new HCBS regulations talk about participant preferences. As the legal guardian, what if my preferences and the participant's preferences aren't the same?	The Department's expectation is that any disagreements on service delivery preferences will be discussed during the person-centered planning process to find a resolution. While the HCBS rules do not supersede the capacity of the legal guardian to make decisions for the participant, the person-centered planning process will include conflict of interest strategies to resolve disagreements during plan development.
As a legal guardian, I prefer that my ward receive services from a provider that does not meet these HCBS requirements. Can my choice of provider override the HCBS requirements?	No. Neither a participant nor a guardian of a participant can choose to receive HCBS-funded services in a setting that does not meet the HCBS requirements. The HCBS setting qualities must be met in order for a setting to be considered home and community based. If any of the HCBS qualities present a real risk to a specific participant, only then can the provider implement a risk mitigation strategy and it must be documented in the person-centered plan.
As a provider, we don't currently enforce the preferences of legal guardians to restrict the rights of our clients (such as limiting access to food) unless it is based on a medical need. How will this practice change with the new	Each individual will have unique needs that must be addressed through the person-centered planning process. If a legal guardian wishes for the provider to impose a restriction on a participant's HCBS rights or setting qualities, there must be a supportive strategy in place to reduce a real and documented risk and/or teach the participant skills to support them in being successful in the HCBS setting. The supportive strategy must be documented in the participant's person-centered plan.

Question	Answer
HCBS rules?	
<p>As a guardian, I don't want my ward to have unlimited or unsupervised access to the community because it may not be safe. How will HCBS providers respect my decisions?</p>	<p>Restricting independence or access to resources is appropriate only to reduce specific risks. If a provider is aware of a risk to the participant's health or safety, or the safety of the community, the provider is responsible for ensuring safeguards are implemented to reduce the risk and are reflected in the person-centered service plan.</p> <p>The Department believes that safeguards are built into the HCBS regulations to allow an individual's right to have choices and to experience the outcomes of those choices without putting them at risk. Risks to the participant or others should be addressed during the person-centered planning process. Reducing risk for individuals receiving Medicaid HCBS should not involve limiting their independence, freedom, and choice unnecessarily.</p>
<p>I am the Certified Family Home provider <i>and</i> the legal guardian for my resident. Do I still have to make sure my home meets the HCBS requirements?</p>	<p>Yes, your Certified Family Home must meet the HCBS setting and person-centered planning requirements. As a Medicaid residential provider, you must follow the process described in the proposed IDAPA rules for exceptions to the residential setting requirements. Restrictions on other HCBS participant rights can only be made when there is a goal and strategy in place to mitigate a documented risk to support them in being successful in an HCBS setting.</p> <p>Remember, neither a participant nor their guardian can choose for a participant to receive HCBS funded services in a setting that does not meet the HCBS requirements.</p>

**DECISION-MAKING AUTHORITY FOR CHILDREN
AND THE HOME AND COMMUNITY BASED SERVICES (HCBS) FINAL RULE
FREQUENTLY ASKED QUESTIONS**

Question	Answer
As a parent, I have preferences for my child that I expect the provider to respect (such as food items). Will providers continue to respect those choices?	If a parent wants a restriction placed on their child that conflicts with HCBS requirements, it must be based on a real and documented risk. If any of the HCBS qualities present a real risk to a specific participant, only then can the provider implement a risk mitigation strategy and it must be documented in the person-centered plan of service.
As a parent of a participant, I prefer that my child receive services from a provider that does not meet the HCBS requirements. Can my choice of provider override the HCBS requirements?	No. Neither a participant nor a guardian of a participant can choose to receive HCBS-funded services in a setting that does not meet the HCBS requirements. Providers delivering HCBS-funded services must comply with IDAPA rules regarding HCBS qualities. Exceptions to those qualities may only be made when there is a real risk to the participant.