

Policy Title: **Home and Community Based Services (HCBS) Children's Waiver Participant's Rights and Choice Policy**

Policy Number: CW0009

Effective Date: April 1, 2021

Last Revised:

**Applicable to:** This policy pertains to all children and youth receiving Home and Community Based Services (HCBS) under the 1915(c) Children's Waiver. Health Home Care Managers (HHCMs), Children and Youth Evaluation Services (C-YES), and HCBS providers must be aware of the participant's rights and choices as per this policy and take appropriate actions.

**Purpose**

This policy is intended as guidance for HHCM/C-YES on the requirements of participant's rights and choices. Additionally, that HCBS providers ensure that participants rights and choice are upheld and reviewed as necessary. This guidance is to ensure HCBS participants are adequately informed, and to help the HHCM/C-YES understand the appropriate actions to take.

**Scope**

HHCM/C-YES and HCBS providers have a responsibility to disclose and review the rights and choices of Children's Waiver participants upon enrollment in the Children's Waiver and annually thereafter unless otherwise noted.

**Participant's Rights**

Children's Waiver participants must be informed of the following rights, which are also documented in the [Children's Waiver: Participant's Rights and Responsibilities](#) document that must be provided to all participants upon enrollment.

- ***Freedom of Choice:*** Participants have Freedom of Choice, which allows them to choose their care management agency, services, and service providers. The HHCM/C-YES must provide information about care options and review the [Freedom of Choice Form](#) with the participants. The Freedom of Choice Form must be signed, documented in the child/youth's record, and provided to the family upon request. Signing the form must occur prior to participating in Waiver Services, and HHCM/C-YES should follow the procedures outline in the [HCBS Waiver Enrollment Policy](#).
- ***File a Complaint:*** Participants have the right to file a complaint. The complaint can be about any of their services or providers. The HHCM/C-YES must inform the participant on how to file a complaint, which can be executed verbally or in writing. Participants who file a complaint still have the right to a Fair Hearing.
- ***Report Abuse:*** Participants have a right to report abuse experienced by service providers, HHCM/C-YES, and/or any other involved parties. If the HHCM/C-YES suspects a child/youth is being abused or maltreated, they should report it to the New York State Central Register of Child Abuse and Maltreatment Hotline at 1-800-342-3720. In an emergency, HHCMs/C-YES should call 911 or their local police.
- ***Request a Conference:*** Participants have the right to request a formal conference if they disagree with the decision on the [Notice of Decision \(NOD\) Form](#) regarding their eligibility and admission into the Children's Waiver. Participants should make the request

for a conference as soon as possible and within 60 days if a conference is desired. During a conference, participants will meet with their care team to review the decision. Participants still have the right to a Fair Hearing, even if a conference is held.

- **Request a Fair Hearing:** Participants also have the right to request a Fair Hearing if they disagree with the decision on the NOD regarding their eligibility and admission into the Children's Waiver. During a Fair Hearing, participants will present their disagreement of the decision to a judge. A Fair Hearing may be requested even if a complaint has not been filed. Participants have 60 days from the date on the NOD to request a Fair Hearing. The NOD must be returned within 10 days to maintain services while waiting for the Fair Hearing. If the judge issues in favor of the decision indicated on the NOD, participants may have to pay for the services they received after the NOD was issued.

### **Care Manager Responsibilities**

HHCM/C-YES must inform the participants of their rights, as outline above, and provide the [Children's Waiver Participant: Rights & Responsibilities](#) document for the participant to keep. Participant's acknowledge receipt of this document on the *Freedom of Choice* form – which must be signed, a copy placed in the participant's record, and a copy provided to the participant for their own records, if requested.

As outlined on the Freedom of Choice form, HHCM/C-YES must explain that participants have the right to choose their care manager, services, and service providers. Care managers must disclose if they have any conflict of interest in serving the participant and should provide conflict free case management, which requires agencies to put firewalls in place between key functions, as outlined in the [Conflict Free Case Management Policy](#).

HHCM/C-YES and HCBS providers must be informed regarding the requirements for filing a Reportable Incident, Complaint, and Grievance outline in policy and ensure that Children's Waiver children/youth/families are made aware of their rights and how to report.

- **Incident Reporting**

HCBS providers should follow the [HCBS Provider Reportable Incidents Policies & Procedures](#) and HHCM/C-YES should follow the [Health Home Monitoring: Reportable Incidents Policies and Procedures](#). Incidents that warrant a report include allegation of abuse – including, physical abuse, psychological abuse, sexual abuse/sexual contact, neglect, and misappropriation of member funds. Other incidents that warrant a report includes, suicide attempt, death, crime level 1, missing person, violation of Protected Health Information (PHI), the use of restrictive interventions, including restraints and seclusions, and exploitation.

- **Grievances and Complaints**

HHCM/C-YES should follow the procedures in the [Complaint and Grievance Policy for Health Homes Serving Children](#). HCBS providers should follow the procedures in the [Complaint and Grievance Policy for HCBS Providers](#). Grievances/complaints may include, any violation of rights, access to and quality of care received, afforded choice of providers, whether services are meeting the enrollee's needs, whether back-up plans are effective, whether health and welfare is being maintained, and dissatisfaction with services or providers or services.