

**PARTICIPANT ASSURANCES**

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“In home and community-based service waivers, each state makes a commitment to assure the health and welfare of the person. This is a fundamental difference between HCBS waivers and other programs. Assuring the health and welfare of the person is a higher standard than the obligation to ensure the quality of each service provided under the Medicaid State Plan.” – Centers for Medicare and Medicaid Services

Self-direction is a Living Choice Money Follows the Person Project philosophy and orientation to the delivery of home and community-based services whereby informed Participants make choices about the services they receive. Participants have the primary authority to make decisions based on what works best for them, regardless of the nature or extent of their disability or the source of the payment for the services.

Other concepts related to self-direction are self-determination, freedom, autonomy, choice, control, responsibility and support.

### **Guiding Principles in Person-Centered Service Delivery**

Supporting Participants to have:

1. Individual Empowerment – by assuring Participants have the skills, knowledge and support to make informed choices about service options.
2. Personal Independence – by supporting individuals to freely exercise control over all aspects of one’s life and to self-advocate one’s personal value.

### **Participant Assurances**

A Participant’s right to self-determination does not diminish with aging, physical or mental illness, disability or life circumstance.

In addition, all people have the right to freedom of choice and action, and freedom from coercion and control.

The following outlines Participant rights and the expected manner in which Providers are expected to deliver services within the Living Choice Project to assure Participant rights are protected.

Participants have the right to:

- Be treated with respect, dignity; and be treated as competent to make decisions
- Be communicated with effectively, directly, and in a language and format that best meets their needs
- Have accurate, objective, relevant, complete and culturally appropriate information
- Refuse proposed assistance, equipment or treatment
- Appeal decisions and register complaints

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**I. Participants have the right to be treated with respect, dignity; and be treated as competent to make decisions.**

- A. Providers show consideration for the dignity of individual Participants when discussing or providing services.
- B. Providers assure that Participants have adequate privacy when discussing or providing services.
- C. Providers assure Participants have time to think about the information, the opportunity to discuss it with others and to reflect on that information before reaching a decision; the Participant can expect not to be coerced or forced to make a choice or a decision with which they are not comfortable.
- D. Providers shall treat all Participants or their designated representatives as competent. Treating a Participant as “incompetent” or as “not having capacity” removes their autonomy. Unless otherwise determined by a court the Participant is presumed to be competent to make his/her own decisions.

**II. Participants have the right to be communicated with effectively, directly, and in a language and format that best meets their needs.**

- A. The Provider shall provide the Participant communication supports and information needed to facilitate communication and enable the Participant to make informed decisions.
- B. The Provider supplies information in a language and format that best meets their needs to make their informed choice:
- C. In all Living Choice services the Providers and/or administrative representatives shall communicate directly with the Participant unless a legal document or agreement delegates authority to another person to speak and decide on behalf of the Participant in which case the Provider communicates with both the Participant and his/her legal representative:
  - 1. Legal documents or agreements that delegate this authority are “durable power of attorney” or “power of attorney”, or a court may delegate this authority to a “curator” or “guardian”.
- D. In exceptional circumstances, the condition of the Participant may make communication impossible and there may be no one authorized or available to consent on the Participant's behalf. In medical emergencies, for instance, the primary need is to treat the Participant. Where the ability to consent is absent or impaired, treatment should be no more than that needed to treat the immediate problem (s) or crisis. Once the emergency is over, the Participant must be given information about the treatment they received.

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### **III. Participants have the right to accurate, objective, relevant, complete and culturally appropriate information.**

- A. The Provider shall assure information is accurate, objective, relevant, and culturally appropriate; Providers are also aware of key cultural values of individuals, and how these values shape worldviews and expectations.
- B. The Provider shall assure the information is specific to the individual situation. Any information that may affect the Participant's decision needs to be provided.
- C. At a minimum, the Provider shall assure information provided about provision of assistance, equipment, services, or treatment and/or procedure consists of:
  1. The Provider's professional assessment of the condition that the assistance, equipment, services, or treatment is proposed for;
  2. The Provider's professional assessment of the nature, likely effects, risks and benefits of the proposed assistance, equipment, services, or treatment;
  3. The Provider's professional assessment of the expected outcome;
  4. The options - including alternative treatments or services, the risks and benefits of each and that the Participant has the right to seek additional opinions about these and other possible options;
  5. Information that will answer the specific questions of Participants;
  6. That the Participant has the right to refuse services and the right to enter into a risk negotiation agreement.
- D. The Provider shall have or obtain accurate, current, and comprehensive information, and the Provider has primary responsibility for providing the information that will help a Participant to make an informed choice.

### **IV. Participants have the right to refuse proposed assistance, equipment, or treatment.**

- A. The Provider shall respect the Participant's right to refuse the assistance, the equipment item, a service, a treatment or a procedure without fear of recrimination, penalty, or other adverse action.
  1. When Provider and Participant disagree on acceptability of a health and safety risk associated with the Participant responsibly assuming the risk, the Provider is obligated to work with the Participant to develop an addendum to the service plan, to identify and manage risk to Participant health and safety;
    - "Responsible assumption of risk" means that the person that assumes the risk has been informed and indicates understanding of the risk, the options

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to eliminate, reduce or minimize the risk and has made a deliberate, conscientious decision to accept the risk as preferable to agreeing to the presented options/constraints intended to ameliorate risk.

- B. The Provider is responsible for informing the Participant of care and treatment options and likely consequences of care and treatment options including the consequences for not pursuing care and treatment options; the Provider documents the information provided to the Participant and the Participant's Informed Choice.

### **V. Participants have the right to appeal decisions and register complaints.**

- A. The Provider shall inform the Participant of his/her Right to present Complaints and the process to register Complaints;
  - 1. The Provider's policies, procedures and processes support:
    - a. Opportunities for Participants to, without fear of recrimination, penalty or other adverse action, register complaints about services, providers or other aspects of service delivery system program performance;
    - b. An expeditious response and attempt to resolve the issue prompting the Participant Complaint to the Participant's satisfaction;
- B. The Oklahoma Health Care Authority is responsible for informing the Participant of his/her Right to Appeal Decisions that may have adverse eligibility or service consequences for the Participant.
  - 1. The Provider shall support the Participant in their right to appeal and facilitate the process.
    - a. Appeal Right policies, procedures and processes support a fair, impartial and expeditious review of Participant requests for reconsideration of decisions that deny eligibility or adversely impact service provision;
    - b. Pre-existing status of eligibility and levels of service delivery remain in effect until the review of the decision under Appeal is completed;
    - c. During enrollment and prior to implementation of any negative action, the Healthcare Plan or Program informs the Participant about the process for initiating an Appeal and how to access help to initiate an Appeal;
    - d. An integral part of the system that supports the Participant's Right to Appeal are safeguards that protect the Participant from recrimination, penalty or other adverse action related to the request for Appeal;

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- e. The Provider shall provide assistance with filing for an Appeal Hearing.
- f. The Provider shall continue services as directed by service plan until Appeals process is complete.

Agency \_\_\_\_\_

Authorized Agent \_\_\_\_\_ Date \_\_\_\_\_