Adirondack Health Institute

Lead Empower Innovate

# POLICY AND PROCEDURE

***Title:*** Home and Community Based Services Children's Waiver Participant's Rights and Choice

***Department:*** Health Home

***Intended Population:*** Children

***Effective Date:*** 4/1/2021

***Date Revised:*** 6/1/2022;10/1/2022; 10/1/2023; 11/1/2024

***DOH Policy:*** CW0009

## Purpose of Policy

This policy is intended as guidance for Health Home Care Managers (HHCM) serving children on the requirements of participant's rights and choices. This guidance is to ensure Home and Community Based Services (HCBS) participants are adequately informed, and to help the HHCM understand the appropriate actions to take.

## Scope

1. This policy must be distributed to all AHI Health Home Program staff and all subcontracting Health Home Service Providers.
2. All recipients of this policy must acknowledge their receipt and understanding of the policy by referring any questions, problems, or compliance issues with the policy within ten days of the issue date to the AHI's Assistant Director.

3. All questions regarding this policy or its implementation may be directed to the AHI Health Home Assistant Director.

## Statement of Policy

AHI shall develop, disseminate, and review at least annually a Home and Community Based Services Children's Waiver Participant's Rights and Choice Policy that addresses purpose, scope, roles and responsibilities, management commitment, coordination among organization entities, and compliance. AHI shall formalize documented procedures to facilitate the implementation of the Home and Community Based Services Children's Waiver Participant's Rights and Choice Policy.

## Definitions

**AHI HH**: AHI Health Home, a designated lead Health Home by the New York State Department of Health

**Child:** A person age 21 or younger who is not on AOT (Assisted Outpatient Treatment).

## POLICY AND PROCEDURE

**Health Home Network Partners:** The group of medical, behavioral, social services, and other community-based organizations by which a Health Home Participant receives services to address needs identified in the comprehensive care management plan developed by the Health Home Participant's AHI Health Home Services Provider.

**Health Home Participant:** A Health Home Candidate who is participating in the AHI Health Home and is assigned to an AHI Health Home Services Provider for care management.

**Health Home Service Provider**: An organization that has a fully executed contract (the "Health Home Services Provider Agreement") with the Adirondack Health Institute to provide health home outreach and/or care management services.

**Children and Youth Evaluation Service (C-YES):** C-YES is the State-designated Independent Entity which conducts HCBS/Level of Care (LOC) eligibility determinations and provides Medicaid application assistance for children who are eligible for HCBS not yet enrolled in Medicaid. C-YES also develops an HCBS Plan Of Care, refers eligible children for HCBS, and monitors access to care for children who opt out of Health Home care management.

**Family:** Within this document the term "family" is used and defined as the primary caregiving unit inclusive of the wide diversity of primary caregiving units in our society. Family is a birth, foster, adoptive or self-created unit of people residing together, with significant attachment to the individual, consisting of adult(s) and/or child(ren), with adult(s) performing duties of parenthood/caregiving for the child(ren) even if the individual is living outside of the home.

**Home and Community Based Services (HCBS)/Level of Care (LOC) Eligibility Determination:** A tiered assessment where multiple factors must be met for child's HCBS/LOC eligibility to be determined. To access Children's HCBS, a child must meet target population, risk factors, and functional criteria as described in the Children's Waiver. The HCBS/LOC Eligibility Determination is housed within the Uniform Assessment System (UAS).

**Workforce member** means Employees, board members, volunteers, interns, independent contractors, vendors, and other persons whose conduct, in the performance of work for a covered entity, is under the direct control of such entity, whether or not they are paid by the covered entity. This includes full and part time employees, affiliates, associates, volunteers, and staff from third party entities who provide service to the covered entity.

### Background

The Home and Community Based Services Children's Waiver Participant's Rights and Choice Program Policy at AHI is intended to facilitate the effective implementation of the processes necessary to meet the Health Home Program standards and requirements as stipulated by the NYS DOH, federal regulations, and best practices. This policy directs that AHI meet these requirements.

## POLICY AND PROCEDURE

**POLICY**

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 must be aware of the participant's rights and choices as per this policy and take appropriate actions. HHCM's 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. The Children's Rights and Responsibilities flyer needs to be reviewed with the family and a copy initialed to verify that it has been reviewed. The initialed copy will need to be uploaded into the member's record.

**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. The document must be initialed and uploaded into the member's record.

- **Freedom of Choice:** Participants have Freedom of Choice, which allows them to choose their care management agency, services, and service providers. The HHCM 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 electronic health record, and provided to the family upon request. Signing the form must occur prior to participating in Waiver Services but NOT prior to the completed LOC. This form needs to be reviewed annually with each Level of Care.
- **File a Complaint:** Participants have the right to file a complaint. The complaint can be about any of their services or providers. The HHCM 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. Please see the Health Home Complaints Policy for more information and the Notice of Decision and Fair Hearing Policy.
- **Report Abuse:** Participants have a right to report abuse experienced by service providers, HHCM, and/or any other involved parties. If the HHCM 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 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 DOH 5287 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 must inform the participants of their rights, as outline above, and provide the Children's Waiver Participant the Rights & Responsibilities document for the participant to keep. Participants acknowledge receipt of this document on the Freedom of Choice form and by initialing the document – 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 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.

The HHCM will need to document the conversation with the family regarding the Freedom of choice form and the review of the Children's Rights and Responsibilities document in the record.

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

- **Incident Reporting –** HHCM 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 should follow the procedures in the Complaint and Grievance Policy for Health Homes Serving Children. 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.

**POLICY AND PROCEDURE**

**Quality and Performance Improvement**

AHI Health Home will review a selection of cases from each HHSP's member attributions that have had a member with a K Code in e-paces. Each case will be assessed for completeness and adherence to the Health Home Policy. Any record found to not have adequate documentation in the member's Electronic Care Management Record is expected to review this policy with their direct supervisor to ensure future adherence.

**Training**

This policy will be disseminated for review and questions before a policy training is given. If more time is needed outside of the initial policy training, a future in-depth training will be developed and/or identified for Health Home Care Managers to gain an understanding of the Children's HCBS and Waiver workflow.

***Contact Person:*** Assistant Director, Health Home

***Responsible Person:*** Health Home Service Provider

***Reviewed By:*** Director, Care Management and Health Home

***Approved By:*** Chief Compliance Officer