



# THE BUREAU OF DISABILITIES SERVICES

## CHOICE OF SERVICES AND SETTINGS

### FREQUENTLY ASKED QUESTIONS

#### ACRONYMS/DEFINITIONS

CMO: *Case Management Organization*

DSP: *Direct Support Professional*

IST: *Individualized Support Team*

POCOs: *Provider Owned or Controlled Setting*

Provider: *An entity approved by the BDS to provide services and supports to an individual.*

#### FAQs

1. If housemates want to change RHS providers, and one wants to keep one service provider, and the other wants to choose a new RHS provider, how does that work? We have heard from other providers that they would not work with another provider in a split home.

*Housemates have the right to choose different service providers. The providers will have to find a workable solution or serve a 60-day notice to the individual.*

2. What if an individual does not get approved for a lease due to credit history and the agency can, how do we handle the situation?

*The individual and provider could be on the lease with the provider as the co-signer (or guarantor) of payment. Another option is for the lease to be between the provider and the rental company, but the lease must allow for sub-leasing. The provider would have to have a sub-lease in place with the individual.*

3. If the individual wants to live alone, but it's a 2 or 3 bedroom. Does this end up falling on the individual to pay the full rent?

*The individual has the choice to live alone but must also do so within their means. If the individual signs a lease for a 2–3-bedroom home without housemates, the individual would be responsible for the full rent.*

4. Is a provider allowed to add a clause in the lease regarding the individual leaving the premises if they do not receive services from the provider's agency anymore?

*No.*

5. In regard to evictions...if one Individual is causing property destruction to the roommate's items, to the staff's vehicles, as well as police intervention to de-escalate the situation, is it fair for the residential provider has the right to place the onus on the teams to decide who should be placed in another setting because this particular lease did not discuss topics that could interrupt housing/eviction.

*This is one of the reasons the individual should have a legally enforceable agreement. The lease/or legally enforceable agreement should outline causes for eviction. Each case is different so the IST should be discussing the situation. The BDS district office and the Ombudsman can also provide assistance.*

6. What do you do in the cases that Individuals want to live alone but don't have the financials to do so or need 24/7 supports or the family wants more supports (24/7) than the budget allows but expects the provider to provide those supports?

*While an individual wants to live alone, they must also live within their means as individuals outside services must do. Families need to be properly educated on what providers are expected to do.*

7. How do we help our individuals choose staff when they live in a POCOs?

*Even in a POCO, individuals should be given the ability to choose staff.*

8. What is the process if a provider moves an individual into the home without getting permission from the current residents first?

*Moving an individual into the home without the consent of the housemates is a rights violation and violation of the settings rule. The home belongs to the individuals and not the provider.*

9. If one individual likes a person proposed as a 3<sup>rd</sup> roommate and thinks it's a good match but the other housemate is not on board, what next?

*All housemates must agree to move another individual into the home. Remember, the home belongs to all individuals on the lease.*

10. Do you have any advice on how to handle conflicts between the individuals' wants and needs and their families' wants and needs for them?

*In many cases, the families' wants and needs are because they want to protect the individual. The team should be educating families and getting to the root cause of their concern to identify potential solutions.*

11. I have some individuals who have talked about getting tattoos. They are their own guardians. Is this something the team has to agree on?

*The individual has the right to obtain a tattoo. The team should educate the individual on the pros and cons of what it means to get a tattoo (e.g. it is permanent).*

12. What is BDS currently doing to ensure all disabled persons of Indiana have true choice when non-competition restrictive covenants and illegal attacks from BDS providers and others do factually and tangibly restrict choice? How is it possible to say there is choice when those people are tangibly stopping choice? This can't be manipulated by saying the individual has choice by selecting a company when their actual choice is the clinician, they've been with for years but now can't choose them because their prior employer may sue them for breaking a non-compete clause or file a false complaint with BDS to sabotage the individual's free choice. Please help us understand this. Choosing their staff and clinicians regardless of agency profit margins is a part of their full living experience, isn't it? How do their illegal actions honor choice??

*Non-compete clauses are valid employment terms in the state of Indiana. BDS's priorities are ensuring that individuals receive safe and helpful services. BDS providers are required to file a complaint with BDS if the provider believes there is a violation of 460 IAC 6.*

13. Even though they are their own guardian can their parents tell them no?

*If the individual lives in the parent's home, there may be home rules like in many homes. However, in general, the individual has the right to make their own decisions.*

14. For our out of home respite-house, would it be acceptable to create an intake form with all of our DSPs and their descriptions, allowing the individual/guardian to place a check mark with which DSPs they comfortable to meet their care? Then also ensure they know they are able to decline care from any DSP throughout their use of our intermediate respite care?

*Providing the individual and family their staff options upon entering services is a valuable tool to set the stage for the relationship.*

15. How can BDS intervene to ensure guardians are not dismissing providers/case managers who are advocating for individual choice? This seems to occur often though the decision to choose another case manager/CMO but is usually not expressly stated as such.

*Providers and case managers should be advocating for individual choice. If BDS is made aware we can provide more education to the guardian.*

16. How do we apply these topics to services provided in a Day Program setting?

*Choice in day program can be achieved by ensuring such things as: if the individual wants the day services in the community or in a facility setting; if the individual wants to work with the staff assigned to them; or if the individual is able to choose the activities, they are able to participate in through the service.*

17. An individual had services, but living arrangements started changing and she asked the aide if she could live with her. Is there a guideline or a step-by-step process to answering the individual? And is this acceptable?

*The IST should be having a discussion regarding cases such as this. The BDS District office can also assist.*

18. Will BDS provide information to guardians about their role in decision making? At times, we get stuck in a position of supporting the person's choice such as watching a certain movie and the guardian saying, "no they can't". Having communication to families would be helpful as we often hear them say I'm the guardian so I can make all the choices for the person.

*The IST should be fully informed regarding the individual's specific guardianship. The guardian should involve the individual in all decision-making to the greatest extent possible. This includes the individual having a choice in activities, food preferences, personal items, friends, etc., regardless of guardianship. The BDS district office can also assist in these discussions. Additional information on guardianship can be found in BDS prior webinar available [here](#).*

19. Can you clarify if the individual or the guardian has to be the one approving the housemate? If the individual likes the housemate, but their guardian does not, can the guardian prevent that person from moving in?

*If the individual has a legal guardian, that guardian would approve the housemate. The guardian should involve the individual in all decision-making to the greatest extent possible. This includes the individual having a choice in activities, food preferences, personal items, friends, etc., regardless of guardianship. However, the IST should be working with the individual and family to discuss all options including disagreements between the individual and guardian.*

20. The lease thing is being done in a hybrid way in some places. The individual signs their own lease but the property is still owned by the provider. If the individual wants to switch providers, can be prevented by not being let out of the lease?

*While the provider may own the property and be the landlord, the lease should provide protections to the individual that outlines the process to terminate the lease early. In some cases, there are penalties to terminate a lease which is common with leases. The individual should be educated on their rights with a lease and consequences for terminating a lease early. If an individual has a lease or a legally enforceable agreement, then the individual should not have to move based on changing providers. A lease should not be tied to services with a specific provider.*

21. CMs often see issues of “provider owned homes”. What if the individual wants a new RHS provider?

*If an individual is in a POCO setting, the individual should have a valid lease or rental agreement. The lease/rental agreement should NEVER have a condition that restricts the individual's right to choice of providers for HCBS services. The lease is separate from HCBS services and should not be dependent on each other.*

22. What about emergency placements where a provider takes in an individual and there is no time for the roommates to get to know each other?

*In an emergency placement/transition, an individual should never be moved into another individual's home without the individual's consent. An emergency transition is temporary and should be evaluated prior to making it a permanent placement.*

23. We have also seen situations where the provider has the individuals paying for lawn services citing they “agreed”. It is sometimes in the leases.

*The lease/rental agreement should define what is or is not covered within the lease.*

24. Is there a state reg that requires individuals/guardians be part of the interviewing process when hiring staff for the consumer?

*460 IAC 6 requires person-centered planning. While this does not specify interviewing staff, ensuring the staff is a good fit for the individual is an integral part of person-centered planning and supports.*

25. Can you discuss the issue of the waiver requirement that a lease be signed by a guardian if one is in place, but the Guardian is a professional/paid guardian and the company they work for has a policy that since they do not manage finances at all, they will not sign leases? This has also been an issue from family members who are guardians and refuse to sign leases for the same reasons discussed and being fearful of being held responsible when they aren't managing everything related to finances, etc. Is it ok for the individual to sign their lease?

*The guardianship paperwork defines the responsibility of the guardian. If the guardian is responsible for the finances (estate) of an individual, then the guardian is required to sign the lease. Not all guardians understand what the requirements are under their guardianship and may be unaware that their guardianship covers finances. If the guardianship does not cover finances (estate), then the individual can sign the lease.*