



# Office of Human Rights

## Dignity of Risk

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01

Develop an understanding of legislation associated with an Individual's Approach to Choice & Office of Human Rights Regulations associated with an Individual's Choice.

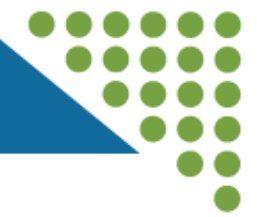
02

Identify the benefits of Choice, Dignity of Risk, & how they impact an Individual's quality of life

03

Learn concepts of Duty to Care and Dignity of Risk, Supported Decision-Making, & strategies for supporting an Individual's Rights





**1974**

- Section 37.1-84.1 of the Code of VA enacted by the General Assembly

**1978**

- Rules and Regulations to Assure the Rights of residents in Facilities became effective

**1986**

- Rules and Regulations to Assure the Rights of individuals in Community Programs became effective

**2009**

- Section § 54.1-2983.2 of the Code of Virginia enacted by the General Assembly

**2001**

- Facility and Community Human Rights Regulations were combined

**1999**

- Olmstead v. L.C.

**2021**

- Section § 37.2-314.3 of the Code of VA enacted by the General Assembly





- ❖ **2023-HCBS Settings Rule** - Home and community-based services (HCBS) provide opportunities for individuals to receive Medicaid waiver services in their own home or community rather than in institutions or other isolated settings. The HCBS rule was implemented to ensure that the delivery of Medicaid-funded HCBS services comply with the community integration mandate of the Americans with Disabilities Act.



Individuals are treated with dignity and respect.

Free from coercion and restraint.

Choice of services and supports.

Access to non-disability specific services.

Freedom to lead their person-centered planning meeting and have outcomes and goals that are meaningful to them.

Access to competitive and integrated employment.

People that are receiving Medicaid services have the right to the same degree of access to the community as those who do not receive Medicaid services.

Source: Home and Community Based Services Toolkit. Link: <https://www.dmas.virginia.gov/for-members/benefits-and-services/waivers-1/home-and-community-based-services-toolkit/>



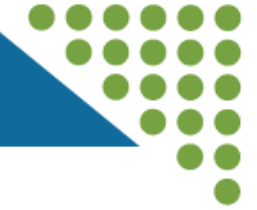
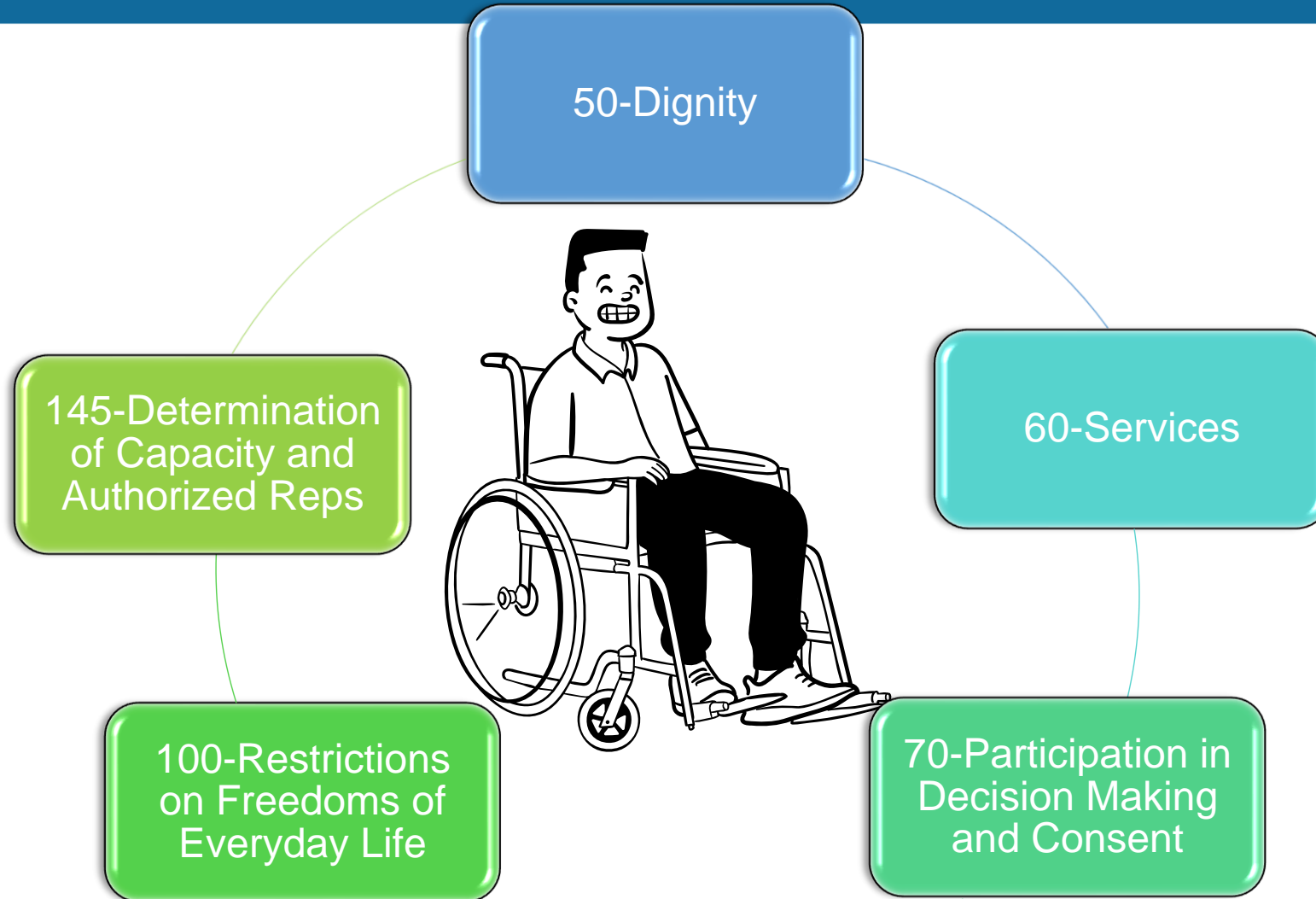


**Assured Rights of Individuals receiving services:** VA Code 37.2-400 outlines specific assured rights of each individual receiving services from providers that are licensed, funded or operated by the Department.

Free from unnecessary restraint or restrictions	Engage or not in work or work related activities	Access to Human Rights Complaint Resolution Process	Confidentiality	Access to and Amendment of records	Participate or not in human research
Have help learning about and applying for public services	*Participate or not in religious activities	Appointment of Substitute Decision Maker, when needed	Due process review of restrictions and capacity evals	Determination of Capacity when needed	Access to any other available complaint remedies
Free from Abuse, Neglect & Exploitation	Safe, sanitary environment	*Nutritionally adequate, varied meals	Privacy,* including private storage space	*Operating toilet, sink, shower and tub	*Direct outside air from a window or air conditioning
*Access to visitors	*Communicate with anyone in private by phone or mail	Individualized treatment based on sound therapeutic practice	Give or not give informed consent for services	Freely move within the service setting and community	*Spend money and keep personal items

*\*In Residential and Inpatient Settings*







can I give you a taste?"

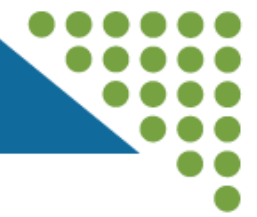
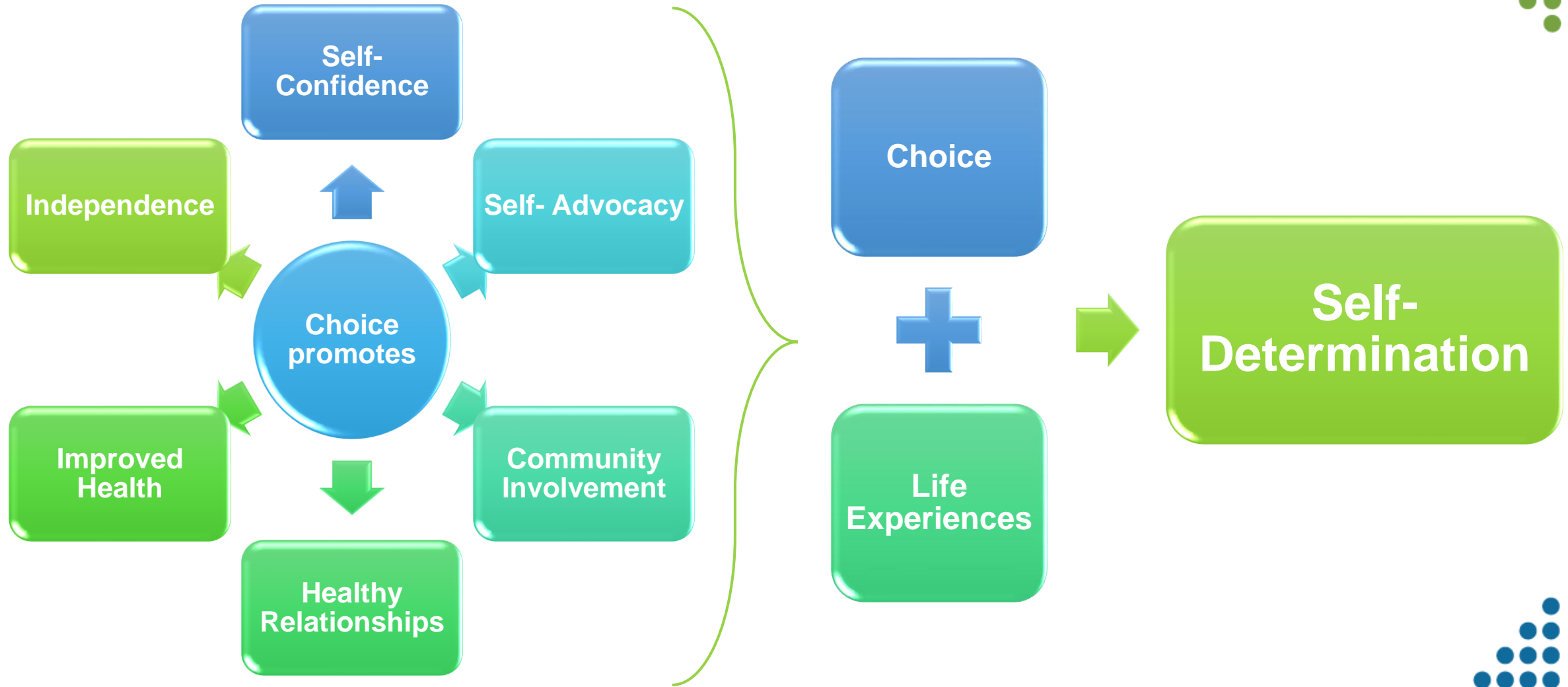
## Importance of Choice

Freedom to make choices is a human right.

Human rights laws protect people's right to decide how to spend their money, make their own health care decisions, work for a living, and have relationships with friends and family.

Choice impacts quality of life.








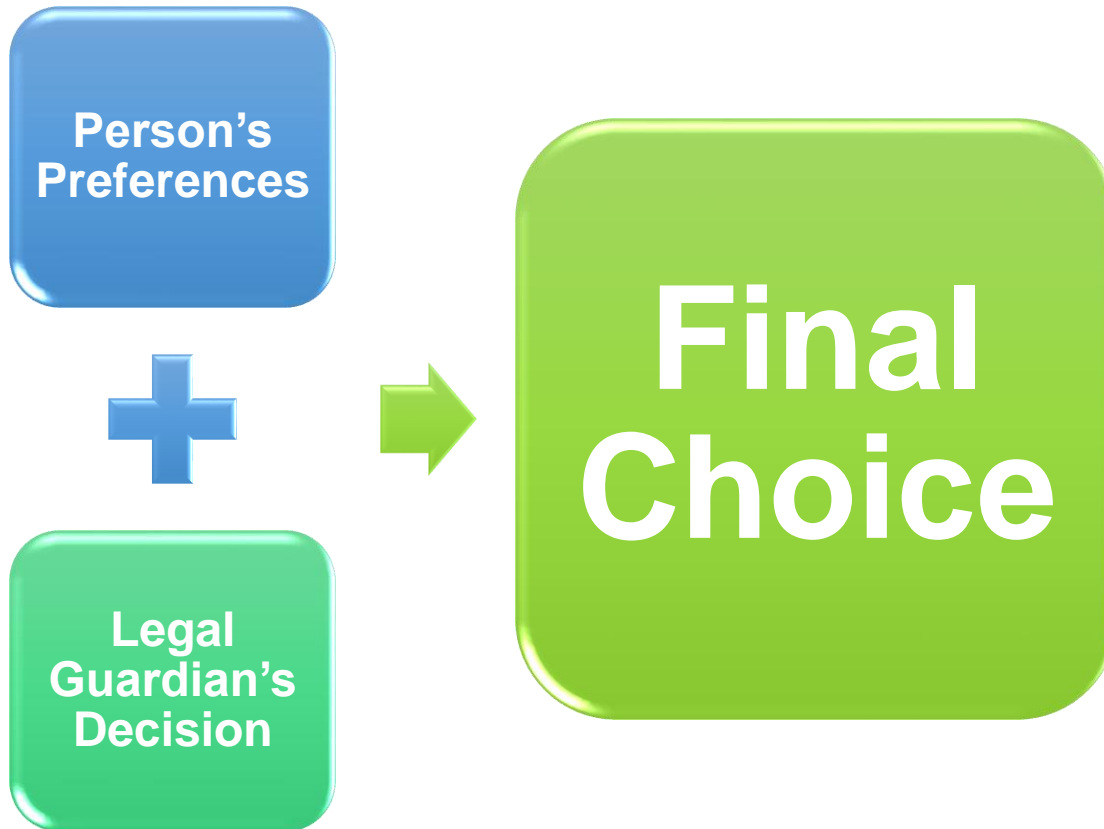
## Higher Degrees of Self- Determination

- More likely to be employed/ earn more money
- More likely to be independent/ live independently
- Better able to recognize and avoid abuse
- Improved physical and mental health outcomes




## Lower Degrees of Self- Determination

- Learned helplessness
  - Feel that loss of control is a personal failure
  - Blame themselves for their rights being taken away
  - No motivation to try new things/ fear of failing
- 



### § 64.2-2019 (E). Duties and powers of guardian.

“A guardian shall, to the extent feasible, **encourage the incapacitated person to participate in decisions, to act on his own behalf**, and to develop or regain the capacity to manage personal affairs. A **guardian, in making decisions, shall consider the expressed desires and personal values of the incapacitated person** to the extent known and shall otherwise act in the incapacitated person's best interest and exercise reasonable care, diligence, and prudence...”



# Using Supported Decision-Making to Support Dignity of Risk

## Ask Questions

- Understand the “why”
- Peel the onion

## Listen to Understand

- Put personal beliefs/ biases aside
- \**Cultural Competency vs. Humility*

## Determine

- Is it unsafe?
- Is it illegal?
- Is it permanent?


## Ensure an Informed Decision

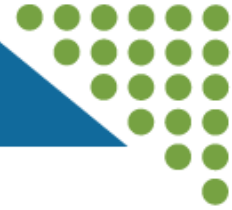
- Pros/ Cons
- Risks/ Benefits
- Explore possible alternatives

## Provide Support

- Observe the Decision

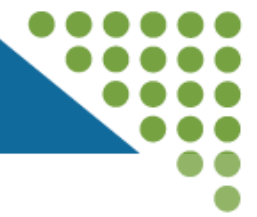
## Follow Up

- How did things go?
  - Would the person do this again?
  - Would the person do anything differently?
  - Be encouraging and acknowledge all feelings
- 



**“Dignity of Risk”**

**“Duty to Care”**



## Dignity of Risk

- The dignity of risk implies respect for individuals' right to make their own decisions, to participate in a broad range of desired activities, even if those activities have risk, and to expose themselves to potential consequences or learning opportunities.

## Duty of Care

- A legal obligation that is imposed on a [person/provider/entity], requiring adherence to a standard of reasonable care to avoid careless acts that could foreseeably harm others, and lead to claim in negligence.

Assume That I Can

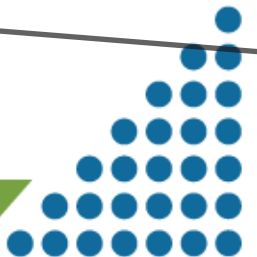


**ASSUME THAT I CAN  
SO MAYBE I WILL**

***...Assumes people with disabilities have the ability to:  
Learn, Think, and Understand***

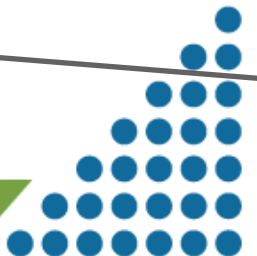
This includes the ability to:

- Make choices
- Determine their own goals
- Be the person in charge of their life path



## ***A Strengths-Based Approach***

- Believe people are capable and do understand you, even if they do not show you.
  - Just because you do not understand what someone is communicating, does not mean that they do not know what they are saying.
- This gives you an opportunity to learn and grow as well:
  - Be creative and try different ways to communicate.
  - It is okay to get it wrong. Learn and try again!







# The Three E's:



**Education**  
**Experience**  
**Exposure**



## Determining the Risk

- Individual's skills, abilities and talents
- Individual's comfort and experience with risk
- Support available
- Impact on others
- Family dynamic and wishes
- Stage of life
- Mitigation of risk
- Reasonable and legal



## Individuals' skills, abilities and talents

- Strengths and weaknesses the Individual may already have that relate to the ask/ decision they made
- Problem solving skills and abilities



## Individual's comfort and experience with risk

- Is the Individual comfortable with the risk?
- Is the Individual *too* comfortable with the risk?
- Remember- Education, Expose, and Experience

## Support available

- Who can support in the decision-making?
- Who can support with the decision
- Who can support the Individual in steps toward their choice?
  - How? and When?
- Assigning roles- be specific about who, how, and when
- ...AND involve the person receiving services in these decisions related to supporting them!

## Impact on others

- Does the decision impact others?
  - If so, how?
- Other considerations?

## Family dynamic and wishes

- Education to family about Dignity of Risk
- Wishes for person to live on their own but person wants to remain in the family home?
- Principles are the same for someone who has a legal guardian or is their own decision maker





## Stage of life


- Youth
- Adult
- Senior



## Mitigation of risk

- Expectations and responsibilities of the person receiving services
- How the risk is managed safely
- Conversations about parameters
  - “When these conditions are met...”
  - “When a person can successfully demonstrate...”

## Reasonable and legal

- Legal:
    - Notification and education that illegal/criminal requests and decisions cannot be facilitated
    - Individual's capacity and impact of Legal Guardianship
  - Living independently (and where that is), having a relationship, etc.
  - Assessing if the ask is considered “within reason” AND
    - Why or why not?
    - Based on whose perspective/bias?
- 

## The “Dignity” in Dignity of Risk

- No judgements
  - What may seem small to one person could be monumental to another
  - What may be an interest or important to them may not be to the family or the provider
- No blaming or “I told you so’s”
  - From a provider → Could land a verbal abuse complaint for demeaning language causing psychological/emotional harm
- Encourage the **ongoing attempts**, and support a person
  - They may try and fail, or
  - They may try and succeed!

**Scenario:**

A young man named Walter is living in a group home. He wants to learn to cook. Staff worry he might burn himself or misuse appliances, so they consistently redirect him to “safer” tasks and complete all cooking for him.

**Missed Dignity of Risk:**

**Concern:** Overprotection = limiting independence

The young adult is denied the chance to learn an important life skill, build confidence, and participate in daily living.

**Applying Dignity of Risk:**

**Possible plan:** Provide supervised practice, adaptive tools, and gradual skill-building instead of avoidance. 

The DBHDS Quality Service Review (QSR) is a quality review routinely conducted by DBHDS.

Having a Dignity of Risk policy is a best practice.

The QSR process looks to confirm that a provider has a policy that addresses:

...the rights of a person to make an informed choice,

...to engage in experiences meaningful to him/her,

...and which are necessary for personal growth and development.

Data is collected on Provider policies and practices related to Dignity of Risk

(Source: DBHDS Quality Service Reviews. Link: <https://dbhds.virginia.gov/developmentalservices>)



The purpose of a policy is to help your organization operate in a way that is consistent with your values and goals.



A policy on Dignity of Risk can:

- Communicate that respecting an individual's right to make decisions about their own life, including those that may involve risk, is important to your organization.
- Provide clear guidance for staff, individuals and families about how you address this issue and provide clear expectations for related practices.
- Describe how you comply with relevant rules and regulations and can outline how your organization can manage any associated risks.

**Your policy could:**

- State your organization's goals and values related to Dignity of Risk.
- Include the relevant Human Rights and HCBS rules and regulations and describe how your organization implements them.
- Describe what is expected of each staff role related to putting Dignity of Risk concepts into practice.
- Ensure your organization has processes that offer guidance when:
  - An Individual seeks to engage in what is perceived as a risk
  - A provider, family member, Legal Guardian, Authorized Representative, etc., may think that something an individual wants to do may be considered a potential risk.
    - You can use the Safety Restrictions Form located in the WaMs ISP-Part V which contains the elements required by Human Rights and HCBS settings regulations.

# Is it okay if our agency uses language from HCBS and Human Rights in our policy?

- Sure! Those regulations are in place to support a framework and are a great place to start. You may want to address your agency's values to promote choice.

# Does our agency need to write procedures to support a policy?

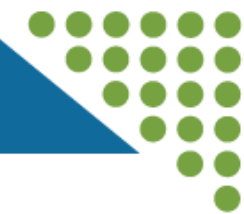
- That's up to you. However, it is helpful to provide clear guidance for staff related to putting Dignity of Risk concepts into practice.

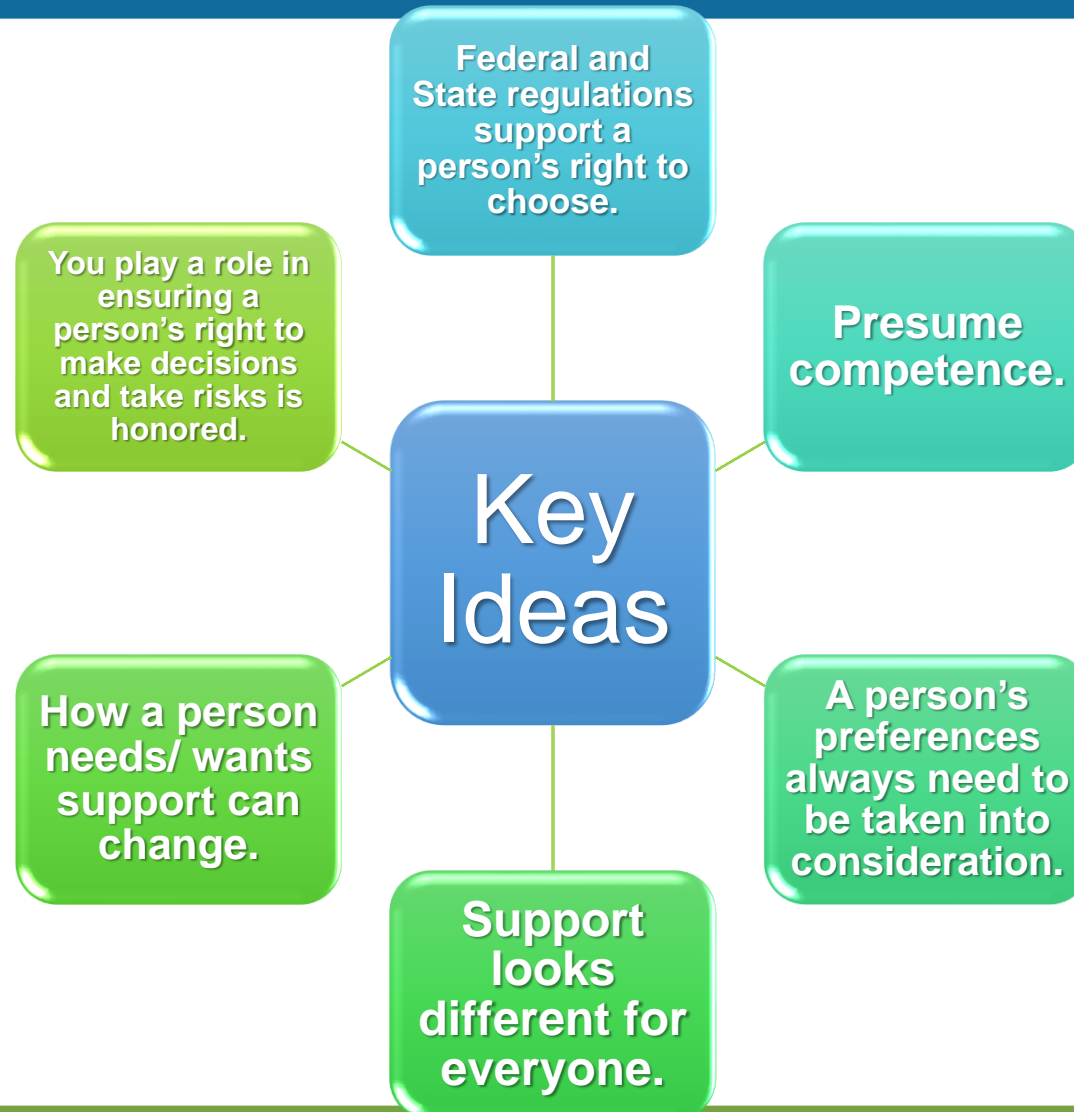


What did you  
learn...

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What will you do...





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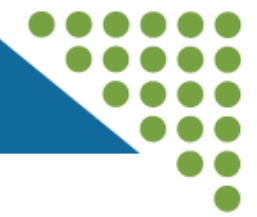
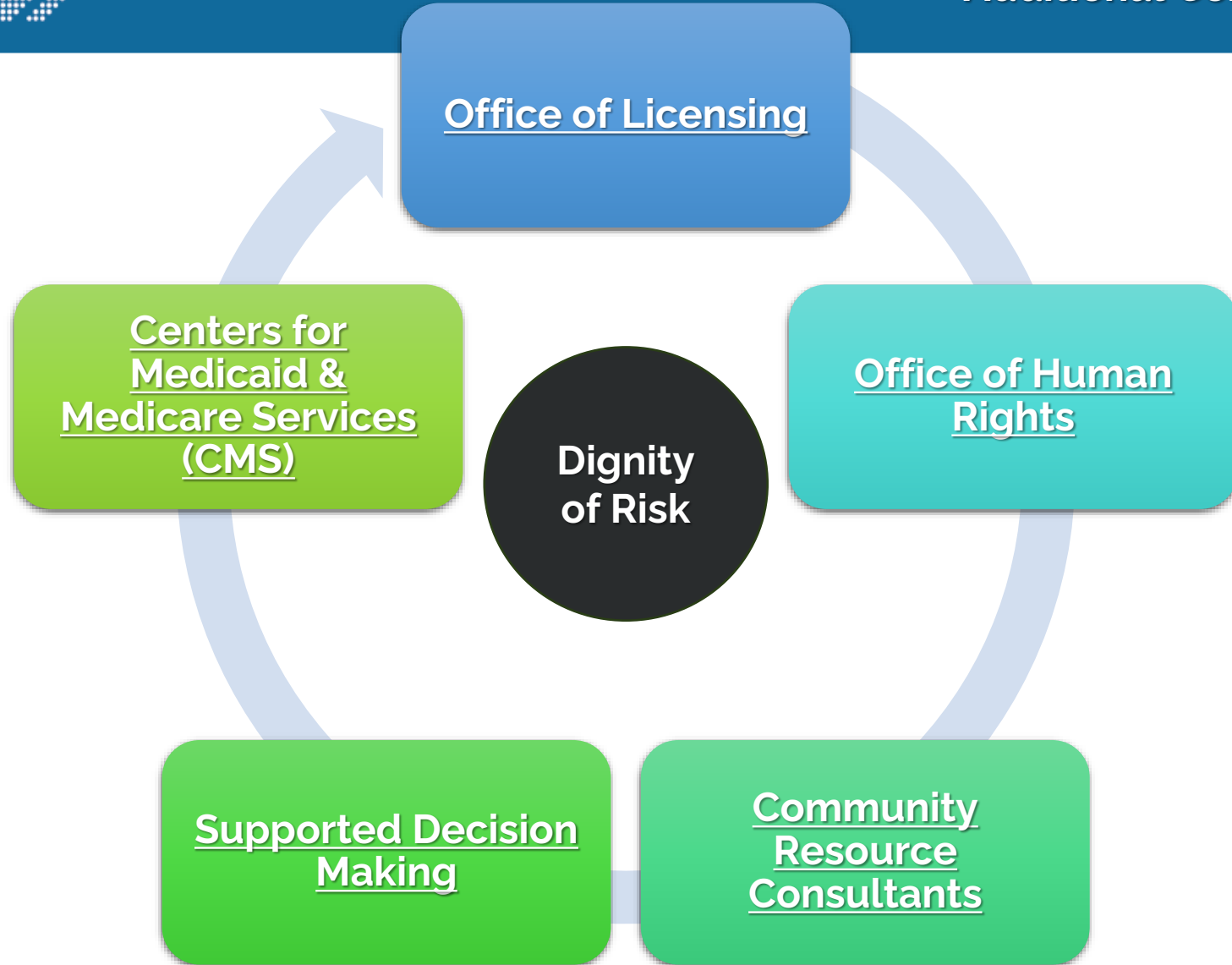
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