



**SENIOR & LONG TERM CARE DIVISION  
COMMUNITY SERVICES BUREAU**

**HOME AND COMMUNITY BASED WAIVER  
Policy Manual**

**Section: CASE MANAGEMENT SYSTEM**

**Subject: Risk Negotiation Process**

**PURPOSE** HCBS providers shall support members in member-direction to the maximum extent possible and assist them in decision-making through informed consent. Waiver service providers shall support a member’s informed choice unless the member’s actions or decisions endanger themselves or others. Under HCBS, states are required to ensure members are protected from abuse, neglect and exploitation and get appropriate assistance and intervention if their choices jeopardize their health and welfare.

Members capable of making informed choices have the right to decide the types and amount of services they receive. Members have the right to receive services under conditions of acceptable risk in which they assume the risks associated with decisions made under conditions of informed consent.

To help identify risks and possible preventive measures, the member and case management team may choose to complete the Risk Prevention Assessment Form in HCBS 899-29a.

If there are risks that a member wishes to take knowingly and in an informed way, and those risks are acceptable to the case management team in terms of health and welfare assurance, the CMT should complete a Risk Negotiation assessment and tool. The Risk Negotiation tool is used by the CMT to assess risk and takes into consideration the member’s preferences and choices. CMTs should make every effort to resolve issues that create risk for members and may lead to denial or termination of services.

If the CMT cannot assure health and welfare based on the results of the risk negotiation process and tool (e.g. the CMT determines that the risk is unacceptable) the CMT must contact the Regional Program Officer to discuss whether discharge from HCBS is appropriate.

**PROCESS** If the CMT identifies a situation which puts the member’s health and safety at risk, the CMT should meet with the member, their legal representative (if applicable), and other appropriate family, friends, and support staff to complete the Risk Negotiation tool, (see HCBS 899-29). In all circumstances, the CMT should work with the member to discuss service options to resolve or reduce the risk and ensure the member understands the potential consequences of his/her choices.

Whenever a Risk Negotiation tool is completed, CMTs must document that the member meets capacity and is able to make an informed choice. If the CMT questions whether a member meets capacity, a referral to APS, a Mental Health professional or the member's Health Care professional should be made to help determine capacity.

If the risk identified by the CMT puts the member or support staff in immediate or imminent danger, the CMT should contact the appropriate agency as appropriate e.g. law enforcement, county health official, public health, mental health crisis response team. If the risk identified relates to suspected abuse, neglect or exploitation, an APS referral must be made

CMTs should take into account the following when completing the Risk Negotiation tool;

- Have the potential risks/benefits been weighed?
- What can be done differently to prevent these risks?
- What strengths/resources does the member have toward prevention?
- Who can help the member with prevention?
- What supports or services (formal or informal) would minimize the risks?
- Who can provide the supports?

In all cases the CMT should keep the following documentation in the member's chart.

- Documentation of member capacity and understanding of the consequences/risks of their informed choices.
- Documentation of all the services and supports offered and the specific interventions tried by the CMT (formal & informal).
- Documentation of the specific needs not being met.
- Recommendations and reasons why the needs cannot be met.

If the member does not agree with the CMT's assessment and/or does not agree to the recommended services in the Service Plan, and the CMT believes the member's choice continues to jeopardize health and safety, the CMT should contact the Regional Program Officer for a discussion about needed corrective action and/or possible termination from HCBS.