

# **Direct Care Core Competencies (DCCC) Course**

## **Learner Guide – Module 4**

This guide is designed for use with the  
Direct Care Core Competencies Course



<http://apdcares.org/>



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# Module 4: Individual Choices, Rights, and Responsibilities



Welcome to Module 4 – The purpose of this module is to equip you, the direct support professional, with the principles and practices that will ensure a basic understanding of the choices, rights, and responsibilities of individuals with developmental disabilities.

It will also help to guide you on how to instill these principles and practices in individuals receiving supports and services, as well as informing the general public.

## Module 4 Objectives

By the end of Module 4 you should be able to:

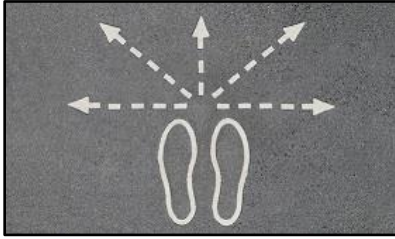
- Explore the key concepts of Individual Rights
- Define choice
- Identify laws that apply to people with developmental disabilities
- Enhance advocacy skills to improve quality of life for people with developmental disabilities
- Understand the legal resources available to persons with developmental disabilities

## Individual Rights

Individuals with developmental disabilities have the same rights as everyone else under the Constitution of the United States. **Those rights include:**

- Freedom of Speech
- Right to Due Process
- Freedom of Religion
- Freedom of Association
- Freedom of Assembly
- Equal Protection of the Law, and
- Right to Privacy

## Choice



**Choice is defined as the act of choosing between two or more possibilities.**

As a direct support professional, it is important to listen to the individuals you are helping to find out their preferences, and encourage them to make their own choices towards their goals.

### Reasons for feeling limited

An individual with disabilities may feel limited in making choices for themselves for many reasons:

- Fear of getting hurt or making mistakes
- Fear of exploitation
- Intimidation from others
- Lack of confidence in ability to make decisions, and
- Political, cultural, or religious preference

### Promote Choice

Here are a few ways that you, the direct support professional, can encourage an individual's choices:

- Actively solicit information about individual preferences
- Continuously present information in a variety of ways to increase awareness of options that relate to daily activities and services
- If staff or providers change, make the individual aware of new staff and service providers
- Give the individual the opportunity to explore and participate in relevant cultural and traditional social events, such as holidays, birthdays, and religious observances
- Expand communication capacity consistent with each individual's needs, and
- Include the individual in **all** decision making about their life

## Federal Laws

The U.S. Congress has passed a number of **key laws that protect individuals with disabilities**. They are the:

- Rehabilitation Act of 1973
- Americans with Disabilities Act (ADA), and the
- Individuals with Disabilities Education Act (IDEA)



### **The Rehabilitation Act of 1973**

The Rehabilitation Act of 1973 is known as **the first federal civil rights law protecting the rights of individuals with disabilities**.

The Act prohibits discrimination based on disability in the areas of:

- Education
- Vocational Education
- College Programs
- Employment
- Health
- Social Service Programs
- Welfare, and
- Federally Funded Programs

### **The Americans with Disabilities Act (ADA)**

The Americans with Disabilities Act, or ADA, was passed by congress in 1990.

The **ADA is a landmark civil rights bill that extends protection against discrimination to people with disabilities**.

It addresses **four main areas** of potential discrimination:

- Employment
- Public Facilities
- Transportation, and
- Communication

## The Individuals with Disabilities Education Act (IDEA)

The Individuals with Disabilities Education Act (IDEA) was passed in 1990 and amended in 2004. **The overall goal of IDEA is to provide individuals with disabilities the same opportunities for education as individuals without disabilities.**

This legislation **guarantees five important rights** to individuals with disabilities from infants to 22 years old:

- Free and appropriate public education
- Education in the least restrictive environment
- An individualized education plan, or IEP
- Provision of necessary related services, in order to benefit from special education fair assessment procedures, and
- Due process and complaint procedures

### Florida Laws



In addition to the civil rights guaranteed by federal laws. The State of Florida has passed a major law that primarily affects persons with disabilities.

**Florida Statute 393.13 is known as the “Bill of Rights for Individuals who are Developmentally Disabled”** and establishes the system of care that the state provides to persons with developmental disabilities that must be designed to meet the individual’s needs, as well as protect the integrity of his or her legal and human rights.

**Please note:** The full text of Florida Statute 393.13(3), a through j, is located in [Appendix 6](#), of the learner’s guide for this course.

### Florida Statute 393.13(3)

The rights described in 393.13(3) Florida Statutes shall apply to all individuals with developmental disabilities:

- a. Dignity, privacy, and humane care including freedom from sexual abuse in residential facilities
- b. The right to religious freedom and practice
- c. Services that protect individual liberty, and provision of the least restrictive conditions for treatment
- d. Quality education and training, regardless of age or disability, instruction in sex education, marriage, and family planning

- e. The right to social interaction and participation in community activities
- f. The right to physical exercise and recreational opportunities
- g. The right to be free from harm, including unnecessary physical, chemical or mechanical restraint, isolation, medication, abuse or neglect
- h. The right to consent to, or refuse treatment
- i. The right not to be excluded from participation in or denied benefits from, programs or activities which receive public funds, and
- j. The right to vote in public elections

## Advocacy

What is advocacy?

The term advocacy is used to describe the kind of helping, enabling, and empowering relationship that a direct support professional should have with the individuals he or she works with.

### Advocacy is:

- Helping people help themselves
- Building self-confidence
- Supporting independence
- Informing people of rights & options
- Providing assistance & training
- Treating people like adults
- Asking people what they want, and
- Helping locate services



### Advocacy is NOT:

- Taking over an individual's life
- Making an individual dependent
- Doing everything for the individual
- Withholding information about rights
- Limiting options
- Treating adults like children
- "Knowing what is best" because you are a professional, and
- Making life decisions for the individual





## **An Attitude of Advocacy**

The direct support professional is in the unique position of having one foot in the organizational world of service provision, and the other foot in the world of field practice with real people. You are in a position to encounter opportunities to advocate on behalf of individuals with disabilities.

You can develop an **attitude of advocacy**. There are many ways you can advocate for persons with disabilities. Here are some examples:

- Bring people together to help respond to crisis needs
- Be a positive role model in your community
- Help identify nontraditional service supports
- Help others to "let go" to reduce dependency, and
- Represent and support the individual's view of their own needs

## **Legal Guidance**

It is important that you, the direct support professional, know the legal representative of the individual with whom you work.

Get to know the key people involved in the life of the individual. Many individuals with disabilities have legal relationships with people who are involved in their lives.

These legal arrangements give the designated representative the legal and binding authority to make decisions on behalf of the individual with the disability. Each legal relationship clearly defines the decisions that can and cannot be made by the individual without the legal authority's involvement.

## **Types of Legal Representatives**

The following are types of representatives who provide legal guidance and representation for individuals with disabilities:

### **Guardian:**

A guardian is court appointed to make decisions when an individual has been determined as incapacitated or lacking the capacity to make decisions and/or care for him/herself and/or estate matters. In Florida, guardianship is a legal proceeding in the circuit courts of Florida and begins with a determination of the individual's capacity or lack thereof. A guardian is an individual who has been appointed by a court of law under Chapter 744, FS, to make decisions for an individual who has had all or certain specified rights removed. A guardian must file an annual report with the court with details of legal areas for which they are guardian.

**Guardian Advocate:** A guardian advocate is appointed by a court to make decisions for an individual who has difficulty in certain identified areas such as the choice of residence, and medical care. The individual is not considered incapacitated with the appointment of a guardian advocate. The guardian advocate provision is established in Chapter 393 FS. A guardian advocate must file an annual report with the court with details of the legal areas for which they are guardian.

**Client Advocate:** A client advocate is a friend or family member of a person receiving services through the Agency for Persons with Disabilities, and who has been approved by the Support Planning Committee pursuant to Section 393.0651, FS. The client advocate may assume a variety of roles depending on the needs and wishes of the individual. But in no case does a client advocate make any decisions for the person or access confidential information unless the client authorizes.

**Foreign Guardian:** A guardian from another state, territory, or country. Florida will honor guardianship from any state, territory, or country, however, the guardian must within 60 days after moving to Florida, file a certified copy of the guardianship order in the county where the ward resides. The guardian will now need to follow all Florida laws related to guardianship, and will need to be represented by an attorney.

**Power of Attorney:** Power of attorney involves a contract between the individual and someone to whom he or she has given the authority to manage a part, or all of his or her affairs. This is a legal action that requires documentation.

**Durable Power of Attorney:** Power of attorney is considered durable if it specifically provides that it will remain in force, even if an individual is subsequently incapacitated. When assigned, the individual delegates authority, but doesn't lose the right to continue making their own decisions. The durable power of attorney can cover simple tasks like writing or endorsing checks. It can involve complex matters, such as selling real estate. It can be very specific or very general. For example, it can authorize one task, such as selling a car, or, it can give the agent power to do everything the individual can do for themselves. The durable power of attorney can be tailored. It is often used to allow agents to gain access to medical records and make health care decisions

**Health Care Surrogate:** A health care surrogate is the person the individual has designated to make health care decisions if he or she is unable to make those decisions. This is a legal action that requires documentation.

**Representative Payee:** A representative payee is an individual who has authorization to receive public benefits in the name of the recipient. A representative payee must file an annual report to the federal government accounting for the expenditure of all monies received to date. Group homes, foster homes, and Intermediate Care Facilities for the Developmentally Disabled are sometimes named as representative payees. When this occurs, the representative payee assumes record keeping and reporting responsibilities.

## Protection from Abuse

The State of Florida recognizes that there are many individuals who, because of age or disability, are in need of protective services.

Those services must allow such an individual the same rights as other citizens and, at the same time, protect the individual from abuse, neglect, or exploitation.

**Abuse** is defined as a willful act or threatened act that causes or can cause significant impairment to the individual's physical, mental, or emotional health.

**Examples of abuse include:** bruises, broken bones, burns, or threats of harm.

**Neglect** is the failure of a caregiver to provide appropriate care, supervision, physical and/or mental health services. It can be repeated conduct or a single act of carelessness that causes, or can reasonably be expected to cause, serious physical or psychological injury, sexual abuse, or substantial risk of death.

**Examples of neglect include:** lack of supervision, not providing food, shelter, clothing, and/or not providing medical care.

**Exploitation** is the temporary or permanent deprivation of an individual's funds, assets or property. Exploitation usually involves one person taking advantage of another person in order to gain financially.

**Examples of exploitation include:** obtaining or using someone's funds by deception or intimidation, using funds for reasons not related to the individual's needs, or making financial decisions when the individual lacks capacity to make the decision him/herself.

As a direct support professional, **you can help protect individuals** from abuse, neglect and exploitation. **You must:**

- **Observe** - pay attention to the individuals in your care. Some people might not use words to communicate and may have difficulty telling you when something is wrong.
- **Communicate** - talk with individuals and other support staff frequently.
- **Document** - write down anything that you see and hear that might indicate abuse, neglect, or exploitation.
- **Review** - look at what you and others have written for patterns that might indicate abuse, neglect, or exploitation.
- **Report** - if abuse is known or suspected, it is mandatory that you report even suspected abuse, neglect and exploitation.



## Mandated Reporters

Direct support professionals are mandated reporters. **You are required to report anything suspicious** if you recognize possible abuse, neglect, or exploitation of the individuals you work with.

Because of your profession you are more trained to recognize, and are more likely than the average person to come in contact with, a person who is being abused, neglected, or exploited.

In a very real sense, you are often the **first line of defense** to protect people who may be suffering at the hands of others.

If you suspect that a person you are working with is being abused, neglected, or exploited, you must **report it immediately to the Florida Abuse Hotline or the Department of Children and Families (DCF) website.**

It is important for you to know that the **Florida Abuse Hotline** will protect your identity. Your name will not be shared with the individuals involved in the investigation.

### To make a report you can:

- Call toll-free **1-800-96-ABUSE (1-800-962-2873)**
- Send a faxed statement to the Abuse Hotline's statewide toll-free **Fax number 1-800-914-0004**, or
- Report the abuse through the **DCF website <https://reportabuse.dcf.state.fl.us>**

If you know about **a situation in which the life of a person with a developmental disability is in immediate danger** due to abuse, neglect, or exploitation, **you should call 911 before calling anyone else.**

**NOTE:** The **Zero Tolerance** course provides much more detailed information about abuse, neglect, and exploitation and should be used as your primary reference.

## Module 4 Review

Let's review some of what you have learned in this module.

Individuals with disabilities do not have the same rights as everyone else under the Constitution.

True or false?

The answer is **false**.

## DCCC Course Learner Guide – Module 4

Which landmark federal law addresses these four main areas of potential discrimination for individuals with disabilities: employment, public facilities, transportation, and communication?

The Americans with Disabilities Act.

And, what is an example of advocacy?

A good example is helping people, help themselves

### **End of Module 4**

Congratulations!

You have completed course 4 of the Direct Care Core Competencies Course – Individual Choices, Rights, and Responsibilities.

You are now ready to start course 5 – Roles and Responsibilities for Direct Support Professionals.

### **We are just an email away!**

If you cannot find the answer to your problem or require technical assistance, **please do not contact** the PFH technical assistance or FDOH; instead, contact the TRAIN Florida APD Support Team at [apd.lmssupport@apdcares.org](mailto:apd.lmssupport@apdcares.org)