NEBRASKA DEPARTMENT OF HEALTH AND HUMAN SERVICES
NOTICE OF PUBLIC HEARING

MAY 17, 2018
1:00 p.m. Central Time
Nebraska State Office Building – Lower Level LLA
301 Centennial Mall South, Lincoln, Nebraska

The purpose of this hearing is to receive additional comments on the proposed adoption of Title 403 - *Medicaid Home and Community-Based Waiver Services (HCBS) for Persons with Developmental Disabilities* - Chapters 1-5, to the Nebraska Administrative Code (NAC). This new title, which governs the HCBS Medicaid Waiver services for individuals with developmental disabilities, will clarify the services offered by different provider types, outline limitations and provider minimum requirements, and update the language to be in compliance with Legislative Bill 333 (2017).

Authority for these regulations is found in Neb. Rev. Stat. § 81-3117(7).

Interested persons may attend the hearing and provide verbal or written comments or mail, fax or email written comments, no later than the day of the hearing to: DHHS Legal Services, PO Box 95026, Lincoln, NE 68509-5026, (402) 742-2382 or dhhs.regulations@nebraska.gov, respectively.

A copy of the proposed changes is available online at http://www.sos.ne.gov, or by contacting DHHS at the mailing address or email above, or by phone at (402) 471-8223. The fiscal impact statement for these proposed changes may be obtained at the office of the Secretary of State, Regulations Division, 1201 N Street, Suite 120, Lincoln, NE 68508, or by calling (402) 471-2385.

Auxiliary aids or reasonable accommodations needed to participate in a hearing can be requested by calling (402) 471-8223. Individuals with hearing impairments may call DHHS at (402) 471-9570 (voice and TDD) or the Nebraska Relay System at 711 or (800) 833-7352 TDD at least 2 weeks prior to the hearing.

NEBRASKA
Good Life. Great Mission.
DEPT. OF HEALTH AND HUMAN SERVICES

Pete Ricketts, Governor

TO: Executive Board
Room 2108 State Capitol
Legislative Council

FROM: Jaime Hegr, Attorney
Department of Health and Human Services (DHHS)

DATE: April 5, 2018

RE: Notice of Rulemaking under Neb. Rev. Stat. § 84-907.06

The Department of Health and Human Services (DHHS) will be holding a second public hearing on adopting the following regulations:

DHHS is proposing changes to the following regulations:

TITLE:	403	Medicaid Home and Community-Based Waiver Services (HCBS) For Individuals with Developmental Disabilities
CHAPTERS:	1	Administration and Definitions
	2	Application, Eligibility, Funding, Waitlist and Appeals
	3	Participation Self-Direction
	4	Developmental Disabilities Day Services Waiver for Adults
	5	Comprehensive Developmental Disabilities Services Waiver

These regulations are scheduled for public hearing on May 17, 2018.

The purpose of this hearing is to receive additional comments on the proposed adoption of Title 403--*Medicaid Home and Community-Based Waiver Services (HCBS) for Persons with Developmental Disabilities*--Chapters 1-5, to the Nebraska Administrative Code (NAC). This new title, which governs the HCBS Medicaid Waiver services for individuals with developmental disabilities, will clarify the services offered by different provider types, outline limitations and provider minimum requirements, and update the language to be in compliance with Legislative Bill 333 (2017).

The following items are enclosed for your referral to the chair of the relevant standing committee of the Legislature:

1. A copy of the notice of public hearing;
2. A copy of the proposed regulations;
3. A copy of the Policy Pre-Review Checklist; and
4. The estimated fiscal impact of this rulemaking action on state agencies, political subdivisions or persons being regulated.

PROPOSED REGULATION
POLICY PRE-REVIEW CHECKLIST

Agency: DHHS – Division of Developmental Disabilities
Title, Chapter of Regulation: 403 NAC 1-5
Subject: Medicaid Home And Community-Based Waiver Services (HCBS) For Persons With Developmental Disabilities
Prepared by: Katherine Becker
Telephone: 402-471-0012

A. Policy Changes and Impacts

1. What does the regulation do and whom does it impact? Provide a brief description of the proposed rule or regulation and its impacts on state agencies, political subdivisions, and regulated persons or entities.

   This title will govern the HCBS Waiver Services for persons with Developmental Disabilities. Title 403 NAC will govern the services provided by the HCBS Waivers, which were approved by CMS with a 5/1/2017 effective date.

   Because the new Waivers have removed services previously offered, and unbundled them into an array of services to better meet the needs of waiver participants, impact on regulated persons, waiver participants and providers of Developmental Disabilities services, is expected.

   Title 403 does not change the funding available to participants or their purchasing capability. Title 403 clarifies which services may be provided by different provider types: Agency and Independent. The qualifications necessary for Independent providers are more stringent, however, the array of services that can be provided by Independent providers has increased.

2. Describe changes being proposed to current policy and briefly provide rationale.

   Title 403 is a new regulation to be adopted. The promulgation of Title 403 will enact regulations that support the new CMS approved DD HCBS Waivers. The previous waivers contained "bundled" services. A "bundled" service allows multiple billable services to billed under one. This is in conflict with federal reimbursement requirement. If the new regulations are not in place to define and enforce the new service array, the old service array in regulations may still be offered, however the federal match would not be claimable for those services.

B. Why is the rule necessary? Explain and provide an identification of authorizing statute(s) or legislative bill(s).

1. Update of regulation (repeal of obsolete statutes, reflect current policy, editing or technical language changes, etc.) Yes.
   In 2017, LB 333 updated the priority language, for serving persons with Developmental Disabilities, In Neb. Rev. Stat. 83-1216. Chapter 2 of Title 403 supports these priorities.

2. Annual changes – cost of living, hunting season schedules, etc. No

3. Law was changed – federal ___ or state ___ [Cite authorizing statute(s) or legislative bill(s)] No

4. Extension of established policy or program, new initiatives or changes in policy (within statutory authority) Yes
   In 2017, LB 333 updated the priority language, for serving persons with Developmental Disabilities, In Neb. Rev. Stat. 83-1216. Chapter 2 of Title 403 supports these priorities.

5. Constituent initiated No

6. Financial needs – increases/decreases in fees No

7. Litigation requires changes in rules No

8. Addresses legal or constitutional concerns of Attorney General's office No

9. Implements federal or court mandate No

10. Other (explain) CMS approved the new Medicaid HCBS DD Waivers in May 2017. Title 403 clarifies the requirements and services provided outlined in the Waivers.

C. What happens if these rules are not adopted?

If Title 403 is not adopted, to define and enforce the DD Waivers' new service array, the old service array in regulations may still be offered, however the federal match would not be claimable for those services.

The new DD Waivers also allow independent providers to now provide habilitative DD Waiver services. Without the adoption Title 403, there would be no regulations that outline the requirements for independent providers of habilitative services.

D. Policy Checklist

1. Is this an update or editorial change reflecting essentially no change in policy? No

2. Does the policy in the proposed regulation reflect legislative intent? Yes. In 2017, LB 333 updated the priority language, for serving persons with Developmental Disabilities, In Neb. Rev. Stat. 83-1216. Chapter 2 of Title 403 supports these priorities.

3. Is the policy proposed in the regulation a state mandate on local government? No Is it funded? N/A

4. Is the policy proposed in the regulation a federal mandate on local government? Yes Is it funded? Yes. The state receives an approximate 50-50 match on Medicaid HCBS Waiver services.

E. Fiscal Impact. In addition to completing the required Fiscal Impact Statement (a copy must be attached to this document), the agency must address the following:

1. Will the proposed regulation reduce, increase, or have no change in resources – funds, personnel or FTE? There will be no change in resources.

2. Have initial contacts been made with citizens or organizations that may be impacted by the proposed regulation? Yes – DDD conducted meetings with provider stakeholders to review and gain input on drafts of Title 403. There was also a robust public comment period to gain feedback and input from family, advocates, providers, and all other stakeholders before submitting the new DD Waivers to CMS for approval.

3. Does the proposed regulation impact another agency? No
   Explain the impact. N/A

4. Will the proposed regulation reduce, increase, or have no change on reporting requirements of businesses? There will be no change in reporting requirements.

5. What is the agency's best estimate of the additional or reduced spending? If there is none, please note. If receipt of federal funds is contingent upon approval of the proposed regulation, then indicate the amount and nature of the federal funds affected, and enclose laws or correspondence from federal officials substantiating the information. No change in spending.

6. Include a description of the impact that the proposed regulation will have on the number of state employees and how the agency intends to address proposed increases or decreases in FTE. No Impact.

F. Unique problems or issues and recommendations.

No change in spending unless the regulations are not adopted, which could result in 100% total state-funded service options:

If Title 403 is not adopted, to define and enforce the DD Waivers' new service array, the old service array in regulations may still be offered, however the federal match would not be claimable for those services.

G. Who is expected to be affected, or to oppose or support the proposed regulation? Explain what initial informal contacts have been made with organizations or citizens who may be affected by the regulation prior to the public hearing.

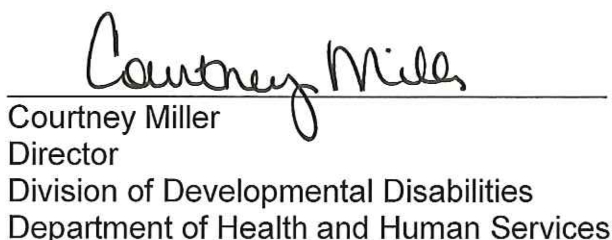
DDD conducted meetings with provider stakeholders to review and gain input on drafts of Title 403. There was also a robust public comment period to gain feedback and input from family, advocates, providers, and all other stakeholders before submitting the new DD Waivers to CMS for approval.

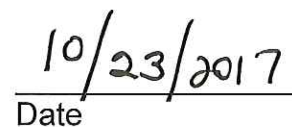
DHHS will solicit public comment on the proposed regulations before the public hearing.

H. Are these proposed rules a likely candidate for negotiated rulemaking? Explain. Has the process been completed? If so, explain how the issues were addressed. No

DHHS Division Director's Verification of Review

I have reviewed these proposals and verify that, at this stage of the regulation's development, these questions have been accurately addressed.





Courtney Miller
Director
Division of Developmental Disabilities
Department of Health and Human Services

Date

FISCAL IMPACT STATEMENT

Agency: **Department of Health and Human Services**	
Title: **403**	Prepared by: Joe Dondlinger
Chapter: **1-5**	Date prepared: 7/20/2017
Subject: **Medicaid Home And Community-Based Waiver Services (HCBS) For Persons With Developmental Disabilities**	Telephone: 402-471-7855

Type of Fiscal Impact:

	State Agency	Political Sub.	Regulated Public
No Fiscal Impact	(☒)	(☒)	(☒)
Increased Costs	(☐)	(☐)	(☐)
Decreased Costs	(☐)	(☐)	(☐)
Increased Revenue	(☐)	(☐)	(☐)
Decreased Revenue	(☐)	(☐)	(☐)
Indeterminable	(☐)	(☐)	(☐)

These regulations provide guidance to stakeholders and mechanisms for enforcement of conditions stipulated in the currently approved 0394 and 4154 HCBS Waivers. There is no fiscal impact.

Provide an Estimated Cost & Description of Impact:

State Agency: No fiscal impact.

Political Subdivision: No fiscal impact.

Regulated Public: No fiscal impact.

If indeterminable, explain why:

TITLE 403 MEDICAID HOME AND COMMUNITY-BASED WAIVER SERVICES (HCBS) FOR INDIVIDUALS WITH DEVELOPMENTAL DISABILITIES

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TITLE 403 MEDICAID HOME AND COMMUNITY-BASED WAIVER SERVICES (HCBS) FOR INDIVIDUALS WITH DEVELOPMENTAL DISABILITIES

CHAPTER 1 ADMINISTRATION AND DEFINITIONS

001. PURPOSE. This Title regulates the services administered by the Department of Health and Human Services through the Medicaid Home and Community-Based Services (HCBS) Waivers for individuals with developmental disabilities.

002. AUTHORITY. The Nebraska Department of Health and Human Services (DHHS) is authorized to establish, administer, and implement these regulations pursuant to the folllowing authority:

002.01 Nebraska Medical Assistance Program (Neb. Rev. Stat. §§ 68-901 to 68-949);

002.02 Title XIX of the Social Security Act, including Section 1915(c) of the Social Security Act (Medicaid Home and Community Based Services (HCBS) Waiver) (42 C.F.R. §440.180 and Part 441, Subpart G); and

002.03 The Health and Human Services Act (Neb. Rev. Stat. §§ 81-3110 to 81- 3124).

003. DEFINITIONS. The following definitions apply to this Title:

003.01 ACTIVITIES OF DAILY LIVING (ADLs). Basic, personal everyday activities, such as eating, dressing, and bathing.

003.02 ADULT COMPANION SERVICE. A drop-in, habilitative service that includes adaptive skill development, non-medical care, supervision, socialization, assisting a participant in maintaining safety in the home, and enhancing independence in self-care and home living skills.

003.03 ADULT DAY SERVICE. A non-habilitative service consisting of meaningful day activities which take place in the community.

003.04 AGENCY PROVIDER. An Agency Provider is an agency, organization, association, or other entity that the Department has certified as meeting certification and accreditation requirements under applicable state statutes and regulations.

003.05 APPLICANT. An individual seeking services through submission of an application.

003.06 APPLICATION DATE. The date on which the Department receives a completed application for services which contains all information necessary to determine eligibility.

003.07 ASSESSMENT. The process of evaluating and identifying the preferences, skills, and needs of a participant and what services, interventions, and supports would facilitate the health, safety, and welfare of that participant.

003.08 ASSISTIVE TECHNOLOGY. Equipment or a product system necessary for a participant's health, welfare, and safety, that is used to increase, maintain, or improve functional capabilities of a participant.

003.09 AUTHORIZED REPRESENTATIVE. A person authorized to represent the applicant or participant in any matter with the Department.

003.10 BEHAVIOR SUPPORT PLAN (BSP). A written strategy, based on person-centered planning and a F~~f~~unctional B~~b~~ehavioral A~~a~~ssessment, which contains specific instructions for a provider designed to reduce the frequency and intensity of challenging behaviors of a participant and to adjust environment and teach new skills.

003.11 CENTER FOR THE DEVELOPMENTALLY DISABLED (CDD). A residential setting for individuals with developmental disabilities in which services are provided for a period of more than twenty-four consecutive hours to four or more individuals.

003.12 CHEMICAL RESTRAINT. A drug or medication used for discipline or convenience and not required to treat medical symptoms. ~~when it is used as a restriction to manage behavior or restrict freedom of movement and is not a standard treatment or dosage for the individual's condition.~~

003.13 COMMUNITY INCLUSION. The opportunity for an individual with a developmental disability to live and interact in community settings where individuals without disabilities are present.

003.14 COMPETITIVE INTEGRATED EMPLOYMENT. Competitive integrated employment is being gainfully employed in a job that takes place in an integrated community setting where the participant receives a competitive wage for his or her job. Work is performed on a full-time or part-time basis (including self-employment) in accordance with 34 C.F.R. §361.5 (9).

003.15 CONSULTATIVE ASSESSMENT SERVICE. The development, modification, evaluation, or implementation of a behavior support plan to assist in maintaining the living environment of a participant.

003.16 CRISIS INTERVENTION SUPPORT. An immediate, intensive, and short-term habilitative service designed to address the temporary increased or severe occurrences of behaviors of a participant.

003.17 CUSTOMIZED EMPLOYMENT. Competitive integrated employment for an individual with a significant disability in accordance with 34 C.F.R. §361.5 (11).

003.18 ELIGIBILITY DETERMINATION. The assessment of an individual to determine eligibility for Waiver services.

003.19 ELIGIBILITY REDETERMINATION. The assessment of an individual to determine continued eligibility for Waiver services.

003.20 ENVIRONMENTAL MODIFICATION ASSESSMENT. A functional evaluation conducted with a participant to determine whether environmental modifications or assistive technology are necessary to enable the participant to integrate more fully into the community; provide greater access to the participant's home or ensure the health, welfare, and safety of the participant.

003.21 FUNDING. The money used to pay for a participant's Waiver services.

003.22 HABILITATION. The assisting of an individual with improving and achieving developmental skills when impairments have caused delaying or blocking of initial acquisition of the skills.

003.23 HABILITATIVE COMMUNITY INCLUSION. A habilitative service that offers training and staff supports for the acquisition, retention, or improvement in self-help; and behavioral, socialization, and adaptive skills that take place in the community in a non-residential setting, separate from the participant's private residence or other residential living arrangement; or any setting outlined and approved in the participant's Individual Support Plan.

003.24 HABILITATIVE WORKSHOP. Regularly scheduled activities that take place in a provider operated or controlled non-residential setting, separate from the participant's private residence or other residential living arrangement. This service includes the provision of personal care, health maintenance, and supervision.

003.25 HEALTH AND SAFETY PLAN. A written strategy that outlines supports for a participant's specific health and safety needs, based on person-centered planning and the individual's health risk factors.

003.26 HOMEMAKER SERVICE. The performance of general household activities, such as meal preparation, laundry services, errands, and routine household care. This service does not include direct care or supervision of the participant.

003.27 HOME MODIFICATIONS. Physical alterations to a participant's residence necessary to ensure the health, welfare, and safety of the participant, or enable the participant to function with greater independence.

003.28 HOSPITAL SUPPORT. Non-habilitative individually-tailored, short-term supports that are available only during a participant's in-patient, acute care hospitalization to ensure the optimal functioning and safety of the participant.

003.29 IN-HOME RESIDENTIAL HABILITATION. A habilitative service that provides individually tailored supports that assist with the acquisition, retention, or improvement in skills related to living in the community in the most integrated setting appropriate to a participant's needs, including personal care, protective oversight, and supervision.

003.30 INDEPENDENT PROVIDER. An Independent Provider is a provider who has not been certified by the Department as an Agency Provider.

003.31 INDIVIDUAL BUDGET AMOUNT (IBA). The amount of funds authorized to fund a participant's Individual Support Plan, based on the participant's assessed needs.

003.32 INDIVIDUAL EDUCATION PROGRAM (IEP). A written plan of instructional goals and objectives developed by a team including the student, parent or legal representative, and representatives of the school district, administered though the school district.

003.33 INDIVIDUAL FAMILY MEETING (IFM). A meeting, with the participant's Individual Support Planning team at which the participant is informed of the program services that are available, the first of which occurs prior to the initial Individual Support Plan development, and annually thereafter. The team consists of the participant, the participant's legal guardian, Service Coordination staff, service providers, other professionals, and anyone the participant invites to participate.

003.34 INDIVIDUAL SUPPORT PLAN (ISP). A document which identifies the supports, activities, and resources required for a participant to achieve and maintain personal goals and health and safety.

003.35 INSTITUTION. A residential facility within Nebraska that assumes total care of individuals admitted. These facilities include, but are not limited to, in-patient hospitals, nursing facilities, ~~assisted living facilities,~~ Intermediate Care Facilities for Individuals with Developmental Disabilities (ICF/DD) and ~~Regional Centers.~~Institutions for Mental Disease.

003.36 INTEGRATION. The full participation of all people in their community life which encompasses the self-determination, independence, empowerment, and inclusion of children and adults with disabilities in all parts of society.

003.37 INTERMEDIATE CARE FACILITIES FOR INDIVIDUALS WITH DEVELOPMENTAL DISABILITIES (ICF/DD). An institution that:

1) Is primarily for the diagnosis, treatment, or rehabilitation of the intellectually disabled or individuals with related conditions; and

2) Provides, in a protected residential setting, ongoing evaluation, planning, 24-hour supervision, coordination, and integration of health or rehabilitative services to help each individual function at the individual's greatest ability.

003.38 INVENTORY FOR CLIENT AND AGENCY PLANNING (ICAP). An adaptive and behavioral assessment instrument that measures physical, cognitive, and emotional functioning, designed to assist in determining the type and amount of assistance needed for applicants and participants.

003.39 LEGALLY RESPONSIBLE ADULT. A person who has a legal obligation under the provision of state law to care for another individual. The parent (natural or adoptive) of a minor child, a spouse, or legal guardian of a participant.

003.40 MECHANICAL RESTRAINT. Any device, material, object or equipment attached or adjacent to a participant's body that restricts freedom of movement or normal access to the body. Mechanical restraint is not:
1) The use of acceptable child safety products;
2) The use of car safety systems; or
3) Safeguarding equipment, when ordered by a physician or health care provider and approved by the Individual Support Planning Team.

003.41 NATURAL SUPPORTS. Non-paid, personal associations and relationships, typically developed in the community that enhance a participant's quality and security of life, including, but not limited to family relationships; friendships; and associations developed though participation in clubs, organizations, and other community activities.

003.42 NOTICE OF DECISION (NOD). A written notice advising an applicant or participant of a decision made by the Department.

003.43 OBJECTIVE ASSESMENT PROCESS (OAP). The process used by the Department to determine the amount of funding for any participant receiving services, which includes the Inventory for Client and Agency Planning (ICAP) and other assessments.

003.44 PARTICIPANT. An individual receiving Waiver program services and supports.

003.45 PERSONAL EMERGENCY RESPONSE SYSTEM (PERS). An electronic device that enables a participant to secure help in an emergency.

003.46 PHYSICAL RESTRAINT. Any physical hold that restricts, or is meant to restrict, the movement or normal functioning of a participant.

003.47 PREVOCATIONAL SERVICE. Prevocational service is a habilitative service that provides learning and work experiences, including career planning, and job searching, designed to enable a participant to develop general, non-job-task-specific strengths and skills that contribute to future employability in paid employment in integrated community settings.

003.48 PROGRAM. The services and supports a participant receives through the Medicaid Home and Community-Based Services Developmental Disabilities Adult Day Services Waiver or the Comprehensive Developmental Disabilities Services Waiver.

003.49 PUBLIC TRANSIT SYSTEM. Federally and state-subsidized transportation, in which regular, continuing shared-ride surface transportation services that are open to the general public or open to a segment of the general public defined by age, disability, or low income.

003.50 REPRESENTATIVE. A person authorized to act on behalf of a participant.

003.51 RESERVED CAPACITY. A portion of the participant capacity of a Waiver program allocated for specified purposes.

003.52 RESIDENTIAL HABILITATION. Residential habilitation is a habilitative service that provides individually tailored supports that assist with the acquisition, retention, or improvement in skills related to living in the community in the most integrated setting appropriate to a participant's needs, including personal care, protective oversight, and supervision. Residential Habilitation is provided in a residence that is owned, operated, or controlled by the provider.

003.53 RESPITE. A non-habilitative service provided on a short-term, temporary basis as relief for the usual unpaid caregiver(s) living in the same private residence as the participant.

003.5456 SERVICE COORDINATION. Medicaid targeted case management services provided by Department staff to assist a participant in facilitating services and supports for which he or she qualifies.

003.55 SLOT. A waiver opening set aside for individuals who will be admitted to the waiver on a priority basis for the purpose(s) specified in the Waiver applications, and subject to funding availability.

003.56 SUPPORTED EMPLOYMENT. Employment in integrated work settings in which individuals are working toward competitive work, consistent with the strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice of the individuals.

003.56 (A) ENCLAVE. Supported Employment – Enclave is a habilitative service in which the provider employs participants in regular business and industry settings.

003.56 (B) FOLLOW ALONG. Supported Employment – Follow Along is an individualized habilitative service that enables a participant to maintain employment in an integrated community employment setting. This employment is paid at or above the applicable minimum wage. This service is provided for, or on behalf of, a participant through intermittent and occasional job support, and communicating with the participant's employer.

003.56(C) INDIVIDUAL. Supported Employment – Individual is an individualized habilitative service designed to help a participant obtain and maintain competitive or customized employment, or self-employment, in an integrated work setting.

003.57 TIER. The organization of funding to reflect the staff intensity ratio at which services are to be provided and their associated costs. The tier for a participant's service is determined by the Objective Assessment Process (OAP).

003.58 TRANSITIONAL SERVICES. Essential, non-recurring basic household set-up expenses needed for participants transitioning from an institution to a private residence that remove identified risks or barriers to a successful transition.

003.59 TRANSPORTATION SERVICE. A ride and assistance to and from the home and parking lot to enable participants to access non-medical program services, and community activities and resources.

003.60 VEHICLE MODIFICATIONS. Alterations to a motor vehicle that is the participant's primary means of transportation in order to accommodate the special needs of the participant.

003.61 WEEK. A calendar week beginning 12:00 AM ~~Sunday~~ Monday through 11:59 PM of the following ~~Saturday~~ Sunday.

TITLE 403 MEDICAID HOME AND COMMUNITY-BASED WAIVER SERVICES (HCBS) FOR INDIVIDUALS WITH DEVELOPMENTAL DISABILITIES

CHAPTER 2 APPLICATION, ELIGIBILITY, FUNDING, WAITLIST AND APPEALS

001. ELIGIBILITY REQUIREMENTS. In order to be eligible for Medicaid Home and Community-Based Waiver Services for individuals with developmental disabilities, an individual must:

1) Be eligible for Medicaid benefits;
2) Be age 21 for the adult day waiver;
3) Have a developmental disability as defined in the Developmental Disabilities Services Act; and
4) Require the level of services provided by an Intermediate Care Facility for Persons with Developmental Disabilities (ICF/DD) initially and annually thereafter.

002. ACCESS. In order to receive services, an individual eligible for services must:

1) Submit a valid application for services;
2) Choose, in writing, to receive Medicaid Home and Community-Based Waiver services instead of institutional placement;
3) Have a physical health screen within the past 12 months and annually thereafter; and
4) Agree to receive Service Coordination services.

003. APPLICATION. In order for an application to be valid, it must include:

1) The name and mailing address of the applicant;
2) The signature of the applicant; and
3) Any documentation including, but not limited to, educational or medical records or reports requested by the Department necessary to determine eligibility.

003.01 APPLICATION SUBMITTAL. An application may be submitted in person, or by mail, fax, or email.

003.02 ASSISTANCE WITH APPLICATION. The Department shall provide an applicant general help with the application process, upon request, in a manner that is accessible to individuals with disabilities or limited English proficiency.

003.03 AMENDMENT TO APPLICATION. An applicant may amend information in an application at any time prior to the date of decision.

03.04 PROMPT ACTION. The Department shall send the applicant a written notification of the decision on an application within 60 days from the date a valid application is received.

003.05 WITHDRAWAL. An applicant may voluntarily withdraw an application.

003.06 WRITTEN NOTIFICATION. The Department will provide timely notice of all decisions. The Notice of Decision is dated and mailed at least ten calendar days before the date an adverse action becomes effective. A written notification shall contain:

(A) The name of participant;
(B) The decision being made;
(C) The dffective date of decision;
(D) An explanation of the decision; and
(E) An advisement of the participant's due process rights.

004. DEVELOPMENTAL DISABILITY REDETERMINATION. A redetermination of an individual's eligibility will occur when:

1) Good cause exists; or
2) The individual reaches the age of 9 and 18 years of age.

005. LEVEL OF CARE DETERMINATION.

005.01 INITIAL. Prior to receiving services under this Title, an individual must be determined by the Department to meet Intermediate Care Facility for Persons with Developmental Disabilities (ICF/DD) Level of Care.

005.02 REDETERMINATION. To remain eligible for services, an individual's status must be reviewed and Intermediate Care Facility for Persons with Developmental Disabilities (ICF/DD) Level of Care determined:

(A) Within 12 months from the previous level of care determination;
(B) No earlier than 60 days prior to the implementation of a renewed Individual Support Plan; and
(C) Any time there is a significant change in a condition affecting an individual's level of care.

006. WAIVER SLOTS.

006.01 PRIORITY. Applicants shall be prioritized as set forth in Neb. Rev. Stat. § 83-1216. ~~in the following order:~~

~~(A) Individuals in immediate crisis due to caregiver death, homelessness, or a threat to the life and safety of the person;~~
~~(B) Individuals who have resided in an institutional setting for at least the preceding twelve months;~~
~~(C) Individuals who have been placed in the legal custody of the Department or under the supervision of the Office of Probation Administration by the Nebraska court system who are transitioning upon age nineteen with no other alternatives, as determined by the Department, to support residential services necessary to pursue economic self-sufficiency;~~
~~(D) Individuals transitioning from the education system upon attaining age 21, to maintain skills and receive the supports necessary to pursue economic self-sufficiency; and~~
~~(E) All other individuals by date of application.~~

007. WAITLIST.

007.01 The Department will maintain a list of applicants who have been deemed eligible for services and are waiting for a slot on a Waiver.

007.02 An individual who has been determined eligible will no longer be considered for waiver services if the individual:
(A) Is no longer eligible for Medicaid;
(B) No longer meets Intermediate Care Facility for Persons with Developmental Disabilities (ICF/DD) Level of Care or fails to cooperate with annual ICF/DD Level of Care determination;
(C) Notifies the Department, in writing, that waiver services are no longer desired; or
(D) Is offered the Comprehensive Developmental Disabilities Services Waiver and declines.

007.03 An individual shall remain on the waitlist if the individual is offered a slot on the Developmental Disabilities Day Services Waiver for Adults but wishes to remain on the waitlist for the Comprehensive Developmental Disabilities Services Waiver.

008. FUNDING.

008.01 OBJECTIVE ASSESSMENT PROCESS (OAP). The funding for a participant is determined using the Objective Assessment Process (OAP) involving information from an assessment of the participant's physical, cognitive, and emotional functioning.
(A) The assessment must include a comprehensive assessment of the participant's:
(i) Functional abilities;
(ii) Maladaptive behaviors;
(iii) Living placement; and
(iv) Behavioral and health factors.
(B) Scoring data from the assessment are entered into a formula to determine the funding amount for day services or residential services.
(C) An individual budget amount is assigned for each participant based on each participant's assessed needs. Assessments are completed to determine individual budget amounts for participants.

008.02 ALTERNATIVE COMPLIANCE TO INDIVIDUAL BUDGET AMOUNT. Alternative compliance to the individual budget amount may be requested when a participant's needs cannot be safely met with funding solely based on the assessment scoring data.
(A) The participant must cooperate in providing any documentation requested during the alternative compliance process to include:
(i) Data for the last 90 days including, but not limited to, nursing plan, health plan, safety plan, Functional Behavioral Assessment, or overnight plan; and
(ii) Other clinical documentation that supports the need including, but not limited to, assessments from medical or behavioral health staff.
(B) Alternative compliance may be denied by the Department for the following reasons:

(i) The participant has not demonstrated a good faith attempt to meet his or her identified needs contained in the Individual Support Plan within the amount identified by the current Objective Asessment Process (OAP);
(ii) The participant failed to cooperate with the alternative compliance process;
(iii) The participant failed to establish an identified health and safety need supporting alternative compliance;
(iv) The participant did not provide documentation demonstrating a clinical rationale supporting alternative compliance; or
(v) In review of the totality of the circumstances, the participant's specific needs can be safely met under the funding determined by the Objective Assessment Process (OAP).

009. FAIR HEARING PROCESSES.

009.01 RIGHT TO APPEAL. An applicant or participant has the right to appeal the following actions and inactions:

(A) The denial of an application;
(B) The failure of the Department to act on an application with reasonable promptness;
(C) A change in the amount or type of benefits or services;
(D) A determination of the amount of medical expenses that must be incurred to establish eligibility;
(E) A determination of the amount of premiums and cost sharing charges;
(F) A determination that the level of services provided by an Intermediate Care Facility for Persons with Developmental Disabilities (ICF/DD) is not required;
(G) A determination that services are not required;
(H) The form of payment or services is changed to be more restrictive; or
(I) The denial of a claim for benefits or services.

An applicant or participant is not entitled to appeal when state or federal law requires automatic changes adversely affecting some or all classes of applicants or participants.

009.02 REQUEST A FAIR HEARING. An applicant or participant can appeal to the Director for a hearing on any action or inaction with regard to an application, the amount of the assistance payment, or failure to act with reasonable promptness. An appeal must be filed in writing within 90 days of the action or inaction. If an appeal is submitted within 10 days of a Notice of Decision being mailed, it is assumed that the applicant or participant is requesting that any ongoing assistance that is the subject of the appeal will continue during the pendency of the appeal, unless the applicant or participant indicates a contrary intent.

TITLE 403 MEDICAID HOME AND COMMUNITY-BASED WAIVER SERVICES (HCBS) FOR INDIVIDUALS WITH DEVELOPMENTAL DISABILITIES

CHAPTER 3 PARTICIPANT SELF-DIRECTION

001. SELF-DIRECTION. A participant may self-direct the following services:
1) Adult Companion Service;
2) Assistive Technology;
3) Consultative Assessment Service;
4) Environmental Modification Assessment;
5) Habilitative Community Inclusion;
6) Home Modification;
7) Homemaker Service;
8) In-Home Residential Habilitation;
9) Prevocational Services;
10) Respite;
11) Supported Employment – Follow Along;
12) Supported Employment – Individual;
13) Transitional Services; and
14) Transportation Services.

001.02 SELF-DIRECTION RESPONSIBILITIES. A participant who self-directs services must:
1) Participate in service planning meetings;
2) Express wants, desires, and needs to the Individual Support Planning team, and to providers during service provision;
3) Identify services to be self-directed;
4) Interview, hire, train, schedule, supervise, and dismiss independent providers and participate in this process when using agency providers;
5) Select qualified and eligible service providers;
6) Sign an appointment of the Department as agent form when using independent providers, permitting the Department to manage the employment taxes and applicable withholdings on behalf of the participant; and
7) Be able to manage providers and self-direct services in a manner necessary for the participant's health, safety or welfare.

TITLE 403 MEDICAID HOME AND COMMUNITY-BASED WAIVER SERVICES (HCBS) FOR INDIVIDUALS WITH DEVELOPMENTAL DISABILITIES

CHAPTER 4 DEVELOPMENTAL DISABILITIES DAY SERVICES WAIVER FOR ADULTS

001. GENERAL INTRODUCTION. The Developmental Disabilities Adult Day Services Waiver is authorized under §1915(c) of the Social Security Act and permits the State to furnish eligible individuals an array of habilitative and non-habilitative services in a community setting.

002. DEVELOPMENTAL DISABILITIES DAY SERVICES WAIVER FOR ADULTS. The following services may be provided under the Developmental Disabilities Adult Day Services Waiver:

002.01 HABILITATIVE SERVICES.
(A) Adult Companion Service;
(B) Consultative Assessment Service;
(C) Crisis Intervention Support;
(D) Habilitative Community Inclusion;
(E) Habilitative Workshop;
(F) Prevocational Service;
(G) Supported Employment – Enclave;
(H) Supported Employment – Follow-Along; and
(I) Supported Employment – Individual.

002.02 NON-HABILITATIVE SERVICES.
(A) Adult Day Services;
(B) Assistive Technology;
(C) Environmental Modification Assessment;
(D) Home Modifications;
(E) Personal Emergency Response System;
(F) Respite;
(G) Transitional Services;
(H) Transportation Service; and
(I) Vehicle Modifications.

003. SERVICE REQUIREMENTS.

003.01 Services are individualized based on the outcomes of the participant-directed support planning team process, and are to be delivered as authorized and described in the Individual Support Plan.

003.02 Services under this chapter shall not replace or duplicate any services available through public education programs funded under the Individuals with Disabilities Education Act (IDEA), or other services available through public education programs in the participant's local school district. Services cannot be provided during regular school hours, as set by the local public school district, even if a participant is home-schooled.

003.03 Services under this chapter shall not replace or duplicate services provided through other Medicaid Home and Community-Based Services (HCBS) Waivers or Medicaid State Plan services.

003.04 All employment-related services must be provided in a manner that promotes integration into the workplace and interaction between participants and people without disabilities in those workplaces. Employment-related services include:
- (A) Prevocational Service;
- (B) Supported Employment – Enclave;
- (C) Supported Employment – Follow Along; and
- (D) Supported Employment – Individual.

003.05 Employment-related services, Adult Day Services, Habilitative Community Inclusion, and Habilitative Workshop services, in any combination, are limited to a maximum of 35 hours per week.

003.06 Participants shall apply for and accept any other federally-funded benefits for which they may be eligible.

003.07 Independent Providers must be at least 19 years of age and independent providers of Supported Employment Individual, Supported Employment Follow-Along, Adult Companion Service, Consultative Assessment Service, and Prevocational Service must:
- (A) Be an enrolled Medicaid provider;
- (B) Provide evidence of one of the following:
  - (i) A Bachelor's degree, or equivalent coursework or training, in education, psychology, social work, sociology, human services, or a related field;
  - (ii) Four or more years experience providing habilitative services for individuals with intellectual or other developmental disabilities or in habilitative program writing and program data collection and analysis;
  - (iii) Four or more years experience teaching or supporting an individual with developmental disabilities; or
  - (iv) Any combination of education and experience identified above totaling four years or more;
- (C) Provide evidence of current certificate of completion from a training source approved by the Department in:
  - (i) State law reporting requirements and prevention of abuse, neglect, and exploitation,
  - (ii) Cardiopulmonary resuscitation (CPR), and
  - (iii) Basic first aid;
- (D) Not be a legally responsible individual or guardian of the participant;
- (E) Not be an employee of DHHS; and

(F) Possess a valid driver's license and insurance as required by Nebraska law, if the provider will be driving while providing services.

004. AVAILABLE SERVICES, LIMITATIONS AND PROVIDER TYPES.

004.01 ADULT COMPANION SERVICE. Adult Companion Service is a drop-in, habilitative service that includes adaptive skill development, non-medical care, supervision, socialization, and assisting a participant in maintaining safety in the home, and enhancing independence in self-care and home living skills.

Adult Companion Service consists of prompting and supervising the participant in completing the following tasks, including, but not limited to:

(A) Activities of daily living (ADL);
(B) Health maintenance;
(C) Meal preparation;
(D) Laundry;
(E) Learning how to obtain police, fire, and emergency assistance;
(F) Performing routine household activities to maintain a clean and safe home; and
(G) Managing personal financial affairs.

Adult Companion Service providers must not perform these activities for the participant.

004.01(A) LIMITATIONS. The following limitations apply to Adult Companion Service.

(i) Adult Companion Service cannot exceed a weekly amount of 25 hours;
(ii) Adult Companion Service is reimbursed at an hourly rate; and
(iii) Adult Companion Service is only provided in homes not operated or controlled by the provider.

004.01(B) ELIGIBLE PROVIDER TYPES. This service may be provided by Agency or Independent Providers.

004.02 ADULT DAY SERVICES. Adult Day Services is a non-habilitative service consisting of meaningful day activities which take place in the community. Adult Day Service provides active supports that foster independence, encompassing both health and social services needed to ensure the optimal functioning of the participant. Adult Day Service includes assistance with activities of daily living (ADL), health maintenance, and supervision. Participants receiving Adult Day Services are integrated into the community to the greatest extent possible.

The Adult Day Service provider must be within immediate proximity of the participant to allow staff to provide support, supervision, safety, security and activities to keep participants engaged in their environment.

004.02(A) LIMITATIONS. The following limitations apply to Adult Day Service.

(i) Adult Day Service is paid at an hourly rate;
(ii) Transportation to and from the Adult Day Service is not included; and
(iii) Services must not be provided in a residential setting.

004.02(B) ELIGIBLE PROVIDER TYPES. This service may be provided by Agency Providers.

004.03 ASSISTIVE TECHNOLOGY. Assistive Technology is equipment or a product system necessary for a participant's health, welfare and safety such as devices, controls, or appliances, whether acquired commercially, modified, or customized, used to increase, maintain, or improve functional capabilities of a participant. The use of assistive technology enables participants who reside in their own homes to increase their abilities to perform activities of daily living (ADL) in their home, or to perceive, control, or communicate with the environment they live in, thereby decreasing their need for assistance from others as a result of limitations due to disability.

Providers shall provide and maintain assistive technology in accordance with applicable building codes or applicable standards of manufacturing, design, and installation. Providers shall provide appropriate training to the participant in the use of the assistive technology.

004.03(A) LIMITATIONS. The following limitations apply to Assistive Technology.

(i) Each participant has an annual budget cap of $2,500 for Assistive Technology. A request to exceed the cap may be approved by the Department based on critical health or safety concerns, available Waiver funding, and other relevant factors;
(ii) The Department may require an on-site assessment of the environmental concern including an evaluation of functional necessity with appropriate Medicaid enrolled professional providers. The cost of the Environmental Modification Assessment is not included in the $2,500 cap on Assistive Technology;
(iii) For items over $500, proof of insurance or an extended warranty must be provided; and
(iv) Damaged, stolen, or lost items not covered by insurance or warranty may only be replaced once every two years.

004.03(B) ELIGIBLE PROVIDER TYPES. This service may be provided by Agency or Independent Providers.

004.04 CONSULTATIVE ASSESSMENT SERVICE. Consultative Assessment Service is the development, modification, evaluation, or implementation of a behavior support plan to assist participants in maintaining their current living environment, while ensuring their safety and the safety of others. Consultative Assessment Service is necessary to improve the independence and inclusion of participants in their community. Consultative Assessment Services may include, but are not limited to:

1) Performing a Functional Behavioral Assessment including level of risk necessary to address problematic behaviors in functioning that are attributed to developmental, cognitive, or communication impairments;
2) Evaluating whether current interventions are correctly administered and effective;
3) Recommending any new interventions; and
4) Recommending best practices in intervention strategies, medical and psychological conditions, or environmental impact to service delivery to the participant's team.

Consultative Assessment Service is completed in collaboration with the support planning team and includes a Functional Behavior Assessment including risk levels, the development of a Behavior Support Plan, development of other habilitative plans, training and technical assistance to carry out the plan and treatment integrity support to the participant and the provider in the ongoing implementation of the plan.

Providers may conduct observations in person or by telehealth.

004.04(A) LIMITATIONS. The following limitations apply to Consultative Assessment Service:

(i) Consultative Assessment Services is billed at an hourly rate for up to 5 hours per month;

(ii) Consultative Assessment Services may only be provided by a Licensed Independent Mental Health Practitioner (LIMHP), Licensed Clinical Psychologist (PhD), or Advanced Practice Registered Nurse (APRN);

(iii) Functional Behavioral Assessments may only be provided by a ~~Board Certified Behavior Analyst (BCBA),~~ Licensed Independent Mental Health Practitioner (LIMHP), Licensed Clinical Psychologist (PhD), or Advanced Practice Registered Nurse (APRN);

(iv) Consultants providing this service must attend a minimum of two Individual Support Plan (ISP) meetings per ISP year. More frequent attendance may be necessary based on frequency of High General Event Record (GER) reporting; and

(v) This service must not be provided concurrently with Crisis Intervention Support.

003.04(B) ELIGIBLE PROVIDER TYPES. This service may be provided by Agency or Independent Providers.

004.05 CRISIS INTERVENTION SUPPORT. Crisis Intervention Support is an immediate, intensive and short-term habilitative service provided to address a participant's temporary increased or severe occurrences of behaviors. This service is provided outside the participant's annual budget.

This service includes:

1) Development or modification of a Behavior Support Plan if Consultative Assessment Service has not occurred previously;
2) A Functional Behavior Assessment including risk level;
3) Development of other habilitative strategies, training, and technical assistance to carry out the plan; and
4) Treatment integrity support to the participant and the provider(s) of services other than Crisis Intervention Support, in the ongoing implementation of the Individual Support Plan.

Crisis Intervention Support is carried out in collaboration with the individual support planning team, in accordance with Functional Behavioral Assessments and, as applicable, in collaboration with the Consultative Assessment service provider.

004.05(A) LIMITATIONS. The following limitations apply to Crisis Intervention Support.
- (i) The provider must complete all of the provider's responsibilities so that Crisis Intervention Support can be implemented within 48 hours of request;
- (ii) Crisis Intervention Support is reimbursed at an hourly rate and is limited to no more than 200 hours in a 60-day period, and is further limited to no more than five 60-day periods in twelve consecutive months;
- (iii) Crisis Intervention Support cannot be provided concurrently with Consultative Assessment Service;
- (iv) Behavior Support Plan data with analysis must be documented by the provider in the Department approved electronic information system at the frequency approved in the Individual Support Plan and viewable to the Department;
- (v) The amount of service will be approved by the Clinical Review Team and shall be based on verified need, evidence of the diagnosis or condition requiring this service;
- (vi) Crisis Intervention Support must only be provided by a Licensed Independent Mental Health Practitioner (LIMHP), Licensed Clinical Psychologist (PhD), or Advanced Practice Registered Nurse (APRN); and
- (vii) Direct support staff who do not have clinical experience must have earned a Bachelor's degree to implement positive behavior supports, behavioral interventions, and habilitative strategies.

004.05(B) ELIGIBLE PROVIDER TYPES. This service may be provided by Agency Providers.

004.06 ENVIRONMENTAL MODIFICATION ASSESSMENT. Environmental Modification Assessment is a functional evaluation conducted with the participant to determine if environmental modifications or assistive technology, are necessary:
1) To enable the participant to integrate more fully into the community;
2) To provide ~~fuller~~greater access to the participant in his or her home; or
3) For the health, welfare, and safety of the participant.

004.06(A) LIMITATIONS. The following limitations apply to Environmental Modification Assessment.
- (i) Participant's annual budget cap for Environmental Modification Assessment is $1,000. A request to exceed the cap may be approved by the Department based on critical health or safety concerns, available Waiver funding, and other relevant factors;
- (ii) Environmental Modification Assessment is reimbursed at a flat rate per completed assessment not to exceed the amount charged to the general public; and
- (iii) Environmental Modification Assessments must not evaluate a modification that is not allowed under this chapter.

004.06(B) ELIGIBLE PROVIDER TYPES. This service may be provided by Agency or Independent Providers.

004.07 HABILITATIVE COMMUNITY INCLUSION. Habilitative Community Inclusion is a habilitative service that offers training and staff supports for: the acquisition, retention or improvement in self-help; and behavioral, socialization, and adaptive skills that take place in

the community in a non-residential setting, separate from the participant's private residence or other residential living arrangement; or any setting outlined and approved in the participant's Individual Support Plan.

Habilitative Community Inclusion services may include, but are not limited to:
1) Assisting with the common use of the community's transportation system;
2) Facilitation of inclusion of the participant within a community group or volunteer organization;
3) Opportunities for the participant to join associations and community groups;
4) Opportunities for inclusion in a broad range of community settings including opportunities to pursue social and cultural interests, and choice making; and
5) Assistance with activities of daily living (ADL), health maintenance, and supervision.

004.07(A) LIMITATIONS. The following limitations apply to Habilitative Community Inclusion.
(i) Habilitative Community Inclusion is reimbursed at an hourly rate;
(ii) The rate tier for Habilitative Community Inclusion is determined based upon needs identified in the Objective Assessment Process (OAP);
(iii) The provider is responsible for transporting the participant to and from the participant's private residence, or other provider setting, to settings in the community for Habilitative Community Inclusion services at no additional charge. Reimbursement for transportation is included in the rate for Habilitative Community Inclusion. The provider is responsible for all non-medical transports, to and from services. When the provider transports participants, the provider must ensure that all participants are transported in a safe and comfortable manner that meets the needs of each participant;
(iv) A Habilitative Community Inclusion provider or provider staff shall not provide Habilitative Community Inclusion services to persons 18 years and older and persons under 18 years of age at the same time and in the same location; and
(v) Providers must not engage a participant in work activities, paid or unpaid, during the delivery of this service.

004.07(B) ELIGIBLE PROVIDER TYPES. This service may be provided by Agency or Independent Providers.

004.08 HABILITATIVE WORKSHOP. Habilitative Workshop services provide regularly scheduled activities. This service includes the provision of personal care, health maintenance and supervision. Habilitative Workshop services are regularly scheduled activities, formalized training, and staff supports for the acquisition, retention, or improvement in:
1) Self-help;
2) Behavioral skills;
3) Adaptive skills;
4) Social development;
5) Activities of daily living (ADL); and
6) Community living.

004.08(A) LIMITATIONS. The following limitations apply to Habilitative Workshop.
- (i) Habilitative Workshop is reimbursed at an hourly rate;
- (ii) The rate for this service is determined based upon needs identified in the Objective Assessment Process (OAP);
- (iii) Transportation to and from the participant's private residence, or other provider setting, to a Habilitative Workshop setting is not included in the reimbursement rate;
- (iv) Transportation to and from the Habilitative Workshop setting to integrated community activities during the Habilitative Workshop service hours is included in the reimbursement rate. When the provider transports participants, the provider must ensure that all participants are transported in a safe and comfortable manner that meets the needs of each participant; and
- (v) This service must be provided in a provider operated or controlled non-residential setting, separate from the participant's private residence or other residential living arrangement.

004.08(B) ELIGIBLE PROVIDER TYPES. This service may be provided by Agency Providers.

004.09 HOME MODIFICATIONS. Home Modifications are physical adaptations to the participant's residence that are necessary for the health, welfare and safety of the participant, or are necessary to enable the participant to function with greater independence.

Home Modifications are provided within the current footprint of the residence. Such modifications include, but are not limited to:
1) Installation of ramps;
2) Widening of doorways;
3) Modification of bathroom facilities; and
4) Installation of specialized electric and plumbing systems that are necessary to accommodate the medical equipment and supplies that are necessary for the welfare of the participant.

004.09(A) LIMITATIONS. The following limitations apply to Home Modification.
- (i) Home Modification has a budget cap of $10,000 per five year period. A request to exceed the cap may be approved by the Department based on critical health or safety concerns, available Waiver funding, and other relevant factors;
- (ii) Home modifications shall not be authorized for a residence that is provider-owned, provider-operated or provider-controlled. Home modifications may be authorized for a home owned by a participant's family or guardian in which the participant resides;
- (iii) The Department may require an on-site environmental assessment, including an evaluation of functional necessity with an appropriate Medicaid-enrolled professional provider. The cost of the Environmental Modification Assessment is not included in the $10,000 budget cap for Home Modification;
- (iv) Renter's insurance or homeowner's insurance is required and proof provided to the Department on request;

(v) Adaptations that add to the total square footage of the home are not allowed except when necessary to complete an adaptation (for example, in order to improve entry to a residence or to configure a bathroom to accommodate a wheelchair);
(vi) Adaptations or improvements to the home that are of general utility, and are not of direct medical or remedial benefit to the participant are not allowed; and
(vii) Adaptations will not be allowed if the home presents a health and safety risk to the participant, other than that corrected by the approved Home Modifications.

004.09(B) ELIGIBLE PROVIDER TYPES. This service may be provided by Agency or Independent Providers.

004.10 PERSONAL EMERGENCY RESPONSE SYSTEM (PERS). Personal Emergency Response System (PERS) is an electronic device that enables a participant to secure help in an emergency.

The provider of the Personal Emergency Response System (PERS) is responsible for:
1) Instruction to the participant about how to use the Personal Emergency Response System (PERS) device;
2) Obtaining the participant's or authorized representative's signature verifying receipt of the Personal Emergency Response System (PERS) device;
3) Ensuring that response to device signals (where appropriate to the device) will be provided 24 hours per day, 7 days per week;
4) Ensuring that the participant has a functioning Personal Emergency Response System (PERS) device within 24 hours of notification of malfunction of the device;
5) Updating a list of responder and contact names, at least semi-annually, to ensure accurate and correct information;
6) Ensuring monthly testing of the Personal Emergency Response System (PERS) device; and
7) Furnishing ongoing assistance relating to instruction, use, and maintenance of the device.

004.10(A) LIMITATIONS. The following limitations apply to Personal Emergency Response System (PERS).
(i) Personal Emergency Response System (PERS) shall not be authorized for a participant who resides in a residence that is provider-owned, provider-operated or provider-controlled;
(ii) Personal Emergency Response System (PERS) is reimbursed as a monthly rental fee or as a one-time installation fee, as applicable; and
(iii) Personal Emergency Response System (PERS) is limted to participants who live alone or who are alone for significant parts of the day and do not have a regular unpaid caregiver or provider for extended periods of time.

004.10(B) ELIGIBLE PROVIDER TYPES. This service may be provided by Agency Providers.

004.11 PREVOCATIONAL SERVICE. Prevocational Service is a habilitative service that provides learning and work experiences, including career planning, job searching, and work experiences, where the participant can develop general, non-job-task-specific strengths and skills that contribute to future employability in paid employment in integrated community settings.

Prevocational Services may include career planning to prepare the participant to obtain, maintain or advance employment. Prevocational Services with focus on career planning includes development of self-awareness and assessment of skills, abilities and needs for self-identifying career goals and direction, including resume or business plan development for customized home businesses. Prevocational Services may involve assisting the participant in accessing an Employment Network, the Nebraska Work Incentive Network (WIN), Ticket to Work services, Work Incentive Planning and Assistance (WIPA) services, or other qualified service programs that provide benefits planning.

Prevocational Services may include job searching designed to assist the participant (or in limited situations on behalf of the participant), to locate a job or development of a work experience. Job searching with the participant will be provided on a one-to-one basis.

Prevocational Services also includes the provision of personal care and protective oversight and supervision (when applicable) to the participant.

Participation in Prevocational Services is not a required pre-requisite for Supported Employment – Individual or Supported Employment – Enclave.

004.11(A) LIMITATIONS. The following limitations apply to Prevocational Service.

(i) Prevocational Services shall not exceed 12 consecutive months. Up to an additional 12 months may be approved by the Department with submission of an approved employment plan (through vocational rehabilitation, school district, or the Waiver) and showing active progress on finding employment opportunities, increasing work skills, time on tasks, or other job preparedness objectives;
(ii) Prevocational Service is reimbursed at an hourly rate; and
(iii) Transportation to and from the Prevocational Service is not included in the reimbursement rate for this service.

004.11(B) ELIGIBLE PROVIDER TYPES. This service may be provided by Agency or Independent Providers.

004.12 RESPITE. Respite is a non-habilitative service furnished on a short-term, temporary basis as relief for the usual unpaid caregiver(s) living in the same private residence as the participant. Respite includes assistance with activities of daily living (ADL), health maintenance and supervision.

004.12(A) LIMITATIONS. The following limitations apply to Respite.

(i) Respite service in an institutional setting requires prior approval by the Department and is not authorized unless no other option is available. Respite service in an institutional setting shall be paid at a per diem daily rate;

(ii) Respite service, other than in an institutional setting, is reimbursed in 15-minute increments or daily rate. Any use of Respite over 9 hours within a 24-hour period must be billed as a daily rate; use of Respite under 9 hours must be billed in 15-minute increments;

(iii) The maximum number of hours for participants is 240 hours per annual budget year. Unused Respite cannot be carried over into the next annual budget year. Respite provided at the daily rate counts as 9 hours towards the 240 hour annual maximum;

(iv) Transportation to and from the Respite service is not included in the reimbursement rate for this service;

(v) Respite services may not be provided during the same time period as other program services.

(vi) Respite services may not be provided by any Independent Provider living in the same private residence as the participant;

(vii) A Respite service provider or provider staff shall not provide respite services to persons 18 years and older and persons under 18 years of age at the same time and and in the same location; and

(viii) An Independent Provider must have training in the following areas, and provide evidence of current certificate of completion from a source approved by the Department:

a) State law reporting requirements and prevention of abuse, neglect, and exploitation;
b) Cardiopulmonary resuscitation (CPR); and
c) Basic first aid.

004.12(B) ELIGIBLE PROVIDER TYPES. This service may be provided by Agency or Independent Providers.

004.13 SUPPORTED EMPLOYMENT – ENCLAVE. Supported Employment – Enclave is a habilitative service in which the provider employs participants, in groups, in regular business and industry settings.

Supported Employment - Enclave includes the acquisition of work skills, appropriate work behavior and the behavioral and adaptive skills necessary to enable the participant to attain or maintain his or her maximum inclusion and personal accomplishment in the working community. Supported Employment - Enclave may include services not specifically related to job skill training that enable the participant to be successful in integrating into the job setting. The provider must obtain authorization to pay subminimum wage through the Nebraska Department of Labor.

004.13(A) LIMITATIONS. The following limitations apply to Supported Employment – Enclave.

(i) Supported Employment - Enclave is billed at an hourly rate;

(ii) Supported Employment - Enclave must be provided in a manner that promotes integration into the workplace and interaction between participants and individuals without disabilities in those workplaces; and

(iii) This service cannot be provided in a setting ~~of~~or location controlled or operated by the provider.

004.13(B) ELIGIBLE PROVIDER TYPES. This service may be provided by Agency Providers.

004.14 SUPPORTED EMPLOYMENT – FOLLOW ALONG. Supported Employment – Follow Along is an individualized habilitative service that enables a participant to maintain employment in an integrated community employment setting. This employment is paid at or above the applicable minimum wage. This service is provided for, or on behalf of, a participant through intermittent and occasional job support, and communicating with the participant's employer. The provider must maintain contact with the employer and participant to reinforce and stabilize job placement.

The provider must observe and supervise the participant, teaching job tasks and monitoring at the work site a minimum of twice a month. The provider must facilitate natural supports at the work site and advocate for the participant, but only for purposes directly related to employment.

004.14(A) LIMITATIONS. The following limitations apply to Supported Employment – Follow Along.

(i) Supported Employment - Follow Along is billed at 15-minute increments not to exceed 25 hours annually; and

(ii) Supported Employment - Follow Along must be provided in an integrated community work environment where more than half the employees who work around the participant do not have a disability.

004.14(B) ELIGIBLE PROVIDER TYPES. This service may be provided by Agency or Independent Providers.

004.15 SUPPORTED EMPLOYMENT – INDIVIDUAL. Supported Employment – Individual is an individualized habilitative service designed to help a participant obtain and maintain competitive or customized employment, or self-employment, in an integrated work setting. This service is provided through formalized training and supports. The provider shall provide help to the participant in accessing the following services:

(A) Employment Network;
(B) The Nebraska Work Incentive Network (WIN);
(C) Ticket to Work services;
(D) Work Incentive Planning and Assistance (WIPA) services; or
(E) Other qualified service programs that provide benefits planning.

Supported Employment - Individual includes adaptations, supervision and training required by participants as a result of their disabilities, but does not include supervisory activities rendered as a normal part of the business setting. The employer is still responsible for all routine and ordinary employment matters.

004.15(A) LIMITATIONS. The following limitations apply to Supported Employment – Individual.

(i) Participants are required to receive at least the applicable minimum wage, except for self-employment;
(ii) Supported Employment – Individual service is reimbursed at an hourly rate; and
(iii) Transportation to and from the Supported Employment – Individual service is not included in the reimbursement rate for this service.

004.15(B) ELIGIBLE PROVIDER TYPES. This service may be provided by Agency or Independent Providers.

004.16 TRANSITIONAL SERVICES. Transitional Services are essential, non-recurring basic household set-up expenses needed for participants transitioning from an institution to a private residence that remove identified barriers or risks for the success of the transition. Transitional Services may be approved when a need remains and all other economic assistance resources are exhausted. Transitional Services includes items, such as furniture, furnishings, household items, basic utility fees or deposits, or professional moving expenses.

004.16(A) LIMITATIONS. The following limitations apply to Transitional Services.

(i) Transitional Services have a participant budget cap of $1,500. A request to exceed the cap must be based on critical health or safety concerns, based on available Waiver funding and other relevant factors, and is subject to approval by the Department;
(ii) Approved Transitional Services shall be reimbursed directly to a provider, and not the participant;
(iii) Payment for rental deposit or rent is not allowed in this service;
(iv) Payment for personal care items, food, or clothing, is not allowed in this service; and
(v) This service cannot be provided for a residence owned or controlled by the provider.

004.16(B) ELIGIBLE PROVIDER TYPES. This service may be provided by Agency or Independent Providers.

004.17 TRANSPORTATION SERVICE. Transportation is a non-habilitative service that enables participants to access program services, and community activities and resources. This service does not include transportation to medical appointments that is available under the Medicaid State Plan or other federal and state transportation programs. Transportation Service is not intended to replace formal or informal transportation options, like the use of natural supports.

Transportation providers must meet the same requirements as Medicaid Non-Emergency Transportation Providers, with the exception that the participant's household can own their own vehicle.

The provider must ensure that all participants are transported in a safe and comfortable manner that meets the needs of each participant. The provider must ensure that:

1) Vehicles are adapted to meet the needs of all participants served. Participants must not be denied Transportation Services due to the lack of adaptation of vehicles;
2) Adequate measures are taken to provide a sufficient number of staff in the vehicle to ensure safety and to meet the needs of each particpant being transported; and
3) Each person transporting participants served:
   a) Has a valid driver's license with the appropriate class code;
   b) Has knowledge of state and local traffic rules;
   c) Is capable of assisting participants in and out of vehicles and to and from parking places, when required; and
   d) Has received training in first aid, cardiopulmonary resuscitation (CPR), and in meeting the needs of the specific participants for whom transportation is provided.

004.17(A) LIMITATIONS. The following limitations apply to Transportation Service.

(i) Provider reimbursement for transporting a participant to and from destinations must be calculated by using the most direct route;
(ii) Participant's annual budget cap for Transportation Service is $5,000. A request to exceed the cap must be based on critical health or safety concerns, based on available Waiver funding and other relevant factors, and is subject to approval by the Department;
(iii) Transportation is reimbursed per mile:
   1) Agency provider mileage is reimbursed pursuant to Neb. Rev. Stat. §81-1176 times three; and
   2) Independent provider mileage is reimbursed pursuant to Neb. Rev. Stat. §81-1176;
(iv) Public transit system transportation is reimbursed at the cost of a single ride pass; and
(v) The public transportation rate shall not exceed the rates charged to the general public.

004.17(B) ELIGIBLE PROVIDER TYPES. This service may be provided by Agency or Independent Providers.

004.18 VEHICLE MODIFICATIONS. Vehicle Modifications are adaptations or alterations to a motor vehicle that is the participant's primary means of transportation in order to accommodate the special needs of the participant. The following are specifically excluded:

004.18(A) LIMITATIONS. The following limitations apply to Vehicle Modifications.

(i) Vehicle Modification services has a budget cap of $10,000 per five year period. A request to exceed the cap must be based on critical health or safety concerns, based on available Waiver funding and other relevant factors, and is subject to approval by the Department;
(ii) The Department may require an on-site assessment of the environmental concern, including an evaluation of functional necessity with appropriate Medicaid enrolled professional provider. The cost of the Environmental Modification Assessment is not included in the $10,000 budget cap for Vehicle Modification;

(iii) Motor vehicle insurance is required and proof provided to the Department on request;
(iv) If the motor vehicle is leased, the proof that the modification is transferrable to the next motor vehicle must be provided before Vehicle Modification will be approved;
(v) Vehicle Modifications are limited to motor vehicles that are titled or leased in the name of the participant or a family member;
(vi) Adaptations or improvements to the vehicle that are of general utility, and are not of direct medical or remedial benefit to the participant are not allowed;
(vii) Vehicle Modification service cannot be used to purchase or lease a vehicle;
(viii) Purchase of existing adaptations or adaptations begun without prior authorization is not allowed; and
(ix) Regularly scheduled upkeep and maintenance of a vehicle except upkeep and maintenance of the modifications is not allowed.

004.18(B) ELIGIBLE PROVIDER TYPES. This service may be provided by Agency Providers.

TITLE 403 MEDICAID HOME AND COMMUNITY-BASED WAIVER SERVICES (HCBS) FOR INDIVIDUALS WITH DEVELOPMENTAL DISABILITIES

CHAPTER 5 COMPREHENSIVE DEVELOPMENTAL DISABILITIES SERVICES WAIVER

001. GENERAL INTRODUCTION. The Comprehensive Developmental Disabilities Services Waiver is authorized under §1915(c) of the Social Security Act and permits the State to furnish eligible individuals an array of habilitative and non-habilitative services in residential and community settings.

002. COMPREHENSIVE DEVELOPMENTAL DISABILITIES SERVICES WAIVER. The following services may be provided under the Comprehensive Developmental Disabilities Services Waiver:

002.01 HABILITATIVE SERVICES.
(A) Adult Companion Service;
(B) Consultative Assessment Service;
(C) Crisis Intervention Support;
(D) Habilitative Community Inclusion;
(E) Habilitative Workshop;
(F) In-Home Residential Habilitation;
(G) Prevocational Service;
(H) Residential Habilitation;
(I) Supported Employment – Enclave;
(J) Supported Employment – Follow Along; and
(K) Supported Employment – Individual.

002.02 NON-HABILITATIVE SERVICES.
(A) Adult Day Services;
(B) Assistive Technology;
(C) Environmental Modification Assessment;
(D) Home Modifications;
(E) Homemaker Service;
(F) Personal Emergency Response System;
(G) Respite;
(H) Transitional Services;
(I) Transportation Service; and
(J) Vehicle Modifications.

003. SERVICE REQUIREMENTS.

003.01 Services are individualized based on the outcomes of the participant-directed support planning team process, and are to be delivered as authorized and described in the Individual Support Plan.

003.02 Services under this chapter shall not replace or duplicate any services available through public education programs funded under the Individuals with Disabilities Education Act (IDEA), or other services available through public education programs in the participant's local school district, including, but not limited to, after school supervision and daytime services when school is not in session. Program services cannot be provided during regular school hours, as set by the local public school district, even if a participant is home-schooled.

003.03 Services under this chapter shall not replace or duplicate services provided through other Medicaid Home and Community-Based Services (HCBS) Waivers or Medicaid State Plan services.

003.04 All employment-related services must be provided in a manner that promotes integration into the workplace and interaction between participants and people without disabilities in those workplaces. Employment-related services include:
(A) Prevocational Service
(B) Supported Employment – Enclave;
(C) Supported Employment – Follow Along; and
(D) Supported Employment – Individual.

003.05 Employment-related services, Adult Day Services, Habilitative Community Inclusion, and Habilitative Workshop services, in any combination, cannot be provided to a participant in excess of 35 hours per week.

003.06 Participants shall apply for and accept any other federally-funded benefits for which they may be eligible.

003.07 Independent Providers must be at least 19 years of age and independent providers of Supported Employment - Individual, Supported Employment Follow - Along, Adult Companion Service, Consultative Assessment Service, and Prevocational Service must:
(A) Be an enrolled Medicaid provider;
(B) Provide evidence of one of the following:
(i) A Bachelor's degree, or equivalent coursework or training, in education, psychology, social work, sociology, human services, or a related field;
(ii) Four or more years experience providing habilitative services for individuals with intellectual or other developmental disabilities or in habilitative program writing and program data collection and analysis;
(iii) Four or more years experience teaching or supporting an individual with developmental disabilities; or
(iv) Any combination of education and experience identified above totaling four years or more;

(C) Provide evidence of current certificate of completion from a training source approved by the Department in:
  (i) State law reporting requirements and prevention of abuse, neglect, and exploitation,
  (ii) Cardiopulmonary resuscitation (CPR), and
  (iii) Basic first aid;
(D) Not be a legally responsible individual or guardian of the participant;
(E) Not be an employee of DHHS; and
(F) Possess a valid driver's license and insurance as required by Nebraska law, if the provider will be driving while providing services.

004. AVAILABLE SERVICES, LIMITATIONS, AND PROVIDER TYPES.

004.01 ADULT COMPANION SERVICE. Adult Companion Service is a drop-in, habilitative service that includes adaptive skill development, non-medical care, supervision, socialization, and assisting a participant in maintaining safety in the home and enhancing independence in self-care and home living skills.

Adult Companion Service consists of prompting and supervising the participant in completing tasks including, but not limited to:

1) Activities of daily living (ADL);
2) Health maintenance;
3) Meal preparation;
4) Laundry;
5) Teaching the use of police, fire, and emergency assistance;
6) Performing routine household activities to maintain a clean and safe home; and
7) Managing personal financial affairs.

Adult Companion Service providers must not perform these activities for the participant.

004.01(A) LIMITATIONS. The following limitations apply to Adult Companion Service.
  (i) Adult Companion Service cannot exceed a weekly amount of 25 hours;
  (ii) Adult Companion Service is reimbursed at an hourly rate;
  (iii) Adult Companion Service is only provided in homes not operated or controlled by the provider; and
  (iv) This service cannot be authorized in conjunction with Residential Habilitation or In-Home Residential Habilitation services.

004.01(B) ELIGIBLE PROVIDER TYPES. This service may be provided by Agency or Independent Providers.

004.02 ADULT DAY SERVICES. Adult Day Services is a non-habilitative service consisting of meaningful day activities that take place in the community. Adult Day Services provide active supports that foster independence, encompassing both health and social services needed to ensure the optimal functioning of the participant. Adult Day Services include assistance with activities of daily living (ADL), health maintenance and supervision. Participants receiving Adult Day Services must be integrated into the community to the greatest extent possible.

The Adult Day Service provider must be within immediate proximity of the participant to allow staff to provide support, supervision, safety, security and activities to keep participants engaged in their environment.

004.02(A) LIMITATIONS. The following limitations apply to Adult Day Services.
(i) Adult Day Services is paid at an hourly rate;
(ii) Transportation to and from the Adult Day Services is not included;
(iii) Services must not be provided in a residential setting; and
(iv) Available to adult participants aged 21 years and older.

004.02(B) ELIGIBLE PROVIDER TYPES. This service may be provided by Agency Providers.

004.03 ASSISTIVE TECHNOLOGY. Assistive Technology is equipment or a product system necessary for a participant's health, welfare and safety such as devices, controls or appliances, whether acquired commercially, modified, or customized, used to increase, maintain or improve functional capabilities of a participant. The use of Assistive Technology enables participants who reside in their own homes to increase their abilities to perform activities of daily living in their home, or to perceive, control or communicate with the environment they live in, thereby decreasing their need for assistance from others as a result of limitations due to disability.

Providers shall provide and maintain Assistive Technology in accordance with applicable building codes or applicable standards of manufacturing, design and installation. Providers shall provide appropriate training to the participant in the use of the Assistive Technology.

004.03(A) LIMITATIONS. The following limitations apply to Assistive Technology.
(i) Each participant has an annual budget cap of $2,500 for Assistive Technology. A request to exceed the cap may be approved by the Department based on critical health or safety concerns, available Waiver funding, and other relevant factors;
(ii) The Department may require an on-site assessment of the environmental concern including an evaluation of functional necessity with appropriate Medicaid-enrolled professional providers. The cost of the Environmental Modification Assessment is not included in the $2,500 cap on Assistive Technology;
(iii) For items over $500, proof of insurance or an extended warranty must be provided; and
(iv) Damaged, stolen, or lost items not covered by insurance or warranty may only be replaced once every two years.

004.03(B) ELIGIBLE PROVIDER TYPES. This service may be provided by Agency or Independent Providers.

004.04 CONSULTATIVE ASSESSMENT SERVICE. Consultative Assessment Service is the development, modification, evaluation or implementation of a behavior support plan to assist participants in maintaining their current living environment, while ensuring their safety and the safety of others. Consultative Assessment Service is necessary to improve the independence and inclusion of participants in their community. Consultative Assessment Services may include, but are not limited to:

1) Performing a Functional Behavioral Assessment including level of risk necessary to address problematic behaviors in functioning that are attributed to developmental, cognitive or communication impairments;
2) Evaluating whether current interventions are correctly administered and effective;
3) Recommending any new interventions; and
4) Recommending best practices in intervention strategies, medical and psychological conditions, or environmental impact to service delivery to the participant's team.

Consultative Assessment Service is completed in collaboration with the support planning team and includes: a Functional Behavior Assessment including risk levels; the development of a Behavior Support Plan; development of other habilitative plans; training and technical assistance to carry out the plan; and treatment integrity support to the participant and the provider in the ongoing implementation of the plan.

Providers may conduct observations in person or by telehealth.

004.04(A) LIMITATIONS. The following limitations apply to Consultative Assessment Service:

(i) Consultative Assessment Services is billed at an hourly rate for up to 5 hours per month;
(ii) Consultative Assessment Services may only be provided by a Licensed Independent Mental Health Practitioner (LIMHP), Licensed Clinical Psychologist (PhD), or Advanced Practice Registered Nurse (APRN);
(iii) Functional Behavioral Assessments may only be provided by a ~~Board Certified Behavior Analyst (BCBA),~~ Licensed Independent Mental Health Practitioner (LIMHP), Licensed Clinical Psychologist (PhD), or Advanced Practice Registered Nurse (APRN);
(iv) Consultants providing this service must attend a minimum of two Individual Support Plan (ISP) meetings per ISP year. More frequent attendance may be necessary based on frequency of High General Event Record (GER) reporting;
(v) This service must not be provided concurrently with Crisis Intervention Support; and
(vi) For a participant under the age of 21 years, this service is available under the Medicaid State Plan under Early and Periodic Screening, Diagnosis, and Treatment (EPSDT).

004.04(B) ELIGIBLE PROVIDER TYPES. This service may be provided by Agency or Independent Providers.

004.05 CRISIS INTERVENTION SUPPORT. Crisis Intervention Support is an immediate, intensive and short-term habilitative service provided to address a participant's temporary increased or severe occurrences of behaviors. This service is provided outside the participant's annual budget.

This service includes:

1) Development or modification of a Behavior Support Plan if Consultative Assessment Service has not occurred previously;
2) A Functional Behavior Assessment including risk level;

3) Development of other habilitative strategies, training, and technical assistance to carry out the plan; and
4) Treatment integrity support to the participant and the provider(s) of services other than Crisis Intervention Support, in the ongoing implementation of the Individual Support Plan.

Crisis Intervention Support is carried out in collaboration with the individual support planning team, in accordance with Functional Behavioral Assessments and, as applicable, in collaboration with the Consultative Assessment service provider.

004.05(A) LIMITATIONS. The following limitations apply to Crisis Intervention Support.
- (i) The provider must complete all of the provider's responsibilities, so that Crisis Intervention Support can be implemented within 48 hours of request;
- (ii) Crisis Intervention Support is reimbursed at an hourly rate and is limited to no more than 200 hours in a 60-day period, and is further limited to no more than five 60-day periods in twelve consecutive months;
- (iii) Crisis Intervention Support cannot be provided concurrently with Consultative Assessment Service;
- (iv) Behavior Support Plan data with analysis must be documented by the provider in the Department-approved electronic information system, at the frequency approved in the Individual Support Plan and viewable to the Department;
- (v) The amount of service will be approved by the clinical review team and shall be based on verified need, evidence of the diagnosis or condition requiring this service;
- (vi) Crisis Intervention Support must only be provided by a Licensed Independent Mental Health Practitioner (LIMHP), Licensed Clinical Psychologist (PhD), or Advanced Practice Registered Nurse (APRN);
- (vii) Direct support staff who do not have clinical experience, shall have earned a Bachelor's degree to implement positive behavior supports, behavioral interventions, and habilitative strategies; and
- (viii) Crisis Intervention Support is available to adult participants aged 21 years and over. For a participant under the age of 21 years, this service is available under the Medicaid State Plan under Early and Periodic Screening, Diagnosis, and Treatment (EPSDT).

004.05(B) ELIGIBLE PROVIDER TYPES. This service may be provided by Agency Providers.

004.06 ENVIRONMENTAL MODIFICATION ASSESSMENT. Environmental Modification Assessment is a functional evaluation conducted with the participant to determine if environmental modifications or assistive technology, are necessary:
1) To enable the participant to integrate more fully into the community;
2) To provide ~~fuller~~greater access to the participant in his or her home; or
3) For the health, welfare, and safety of the participant.

004.06(A) LIMITATIONS. The following limitations apply to Environmental Modification Assessment.

(i) Participant's annual budget cap for Environmental Modification Assessment is $1,000. A request to exceed the cap may be approved by the Department based on critical health or safety concerns, available Waiver funding and other relevant factors;
(ii) Environmental Modification Assessment is reimbursed at a flat rate per completed assessment not to exceed the amount charged to the general public; and
(iii) Environmental Modification Assessments must not evaluate a modification that is not allowed under this chapter.

004.06(B) ELIGIBLE PROVIDER TYPES. This service may be provided by Agency or Independent Providers.

004.07 HABILITATIVE COMMUNITY INCLUSION. Habilitative Community Inclusion is a habilitative service that offers training and staff supports for: the acquisition, retention or improvement in self-help; and behavioral, socialization and adaptive skills that take place in the community in a non-residential setting, separate from the participant's private residence or other residential living arrangement; or any setting outlined and approved in the participant's Individual Support Plan.

Habilitative Community Inclusion services may include, but are not limited to:

1) Assisting with the common use of the community's transportation system;
2) Facilitation of inclusion of the participant within a community group or volunteer organization;
3) Opportunities for the participant to join associations and community groups;
4) Opportunities for inclusion in a broad range of community settings including opportunities to pursue social and cultural interests, and choice making; and
5) Assistance with activities of daily living (ADL), health maintenance, and supervision.

004.07(A) LIMITATIONS. The following limitations apply to Habilitative Community Inclusion.

(i) Habilitative Community Inclusion is reimbursed at an hourly rate;
(ii) The rate tier for Habilitative Community Inclusion is determined based upon needs identified in the Objective Assessment Process (OAP);
(iii) The provider is responsible for transporting the participant to and from the participant's private residence, or other provider setting, to settings in the community for Habilitative Community Inclusion services at no additional charge. Reimbursement for transportation is included in the rate for Habilitative Community Inclusion. The provider is responsible for all non-medical transports to and from services. When the provider transports participants, the provider must ensure that all participants are transported in a safe and comfortable manner that meets the needs of each participant;
(iv) A Habilitative Community Inclusion provider or provider staff shall not provide Habilitative Community Inclusion services to persons 18 years and older and persons under 18 years of age at the same time and in the same location;

(v) Providers must not engage a participant in work activities, paid or unpaid, during the delivery of this service; and

(vi) The rate for this service shall not include the basic cost of childcare unrelated to a child's disability. The "basic cost of child care" means the rate charged by and paid to a childcare center or individual provider for children who do not have special needs.

004.07(B) ELIGIBLE PROVIDER TYPES. This service may be provided by Agency or Independent Providers.

004.08 HABILITATIVE WORKSHOP. Habilitative Workshop services provide regularly scheduled activities. This service includes the provision of personal care, health maintenance and supervision. Habilitative Workshop services are regularly scheduled activities, formalized training and staff supports for the acquisition, retention or improvement in:

1) Self-help;
2) Behavioral skills;
3) Adaptive skills;
4) Social development;
5) Activities of daily living; and
6) Community living.

004.08(A) LIMITATIONS. The following limitations apply to Habilitative Workshop.

(i) Habilitative Workshop is reimbursed at an hourly rate;

(ii) The rate for this service is determined based upon needs identified in the Objective Assessment Process (OAP);

(iii) Transportation to and from the participant's private residence, or other provider setting, to a Habilitative Workshop setting is not included in the reimbursement rate;

(iv) Transportation to and from the Habilitative Workshop setting to integrated community activities during the Habilitative Workshop service hours is included in the reimbursement rate. When the provider transports participants, the provider must ensure that all participants are transported in a safe and comfortable manner that meets the needs of each participant; and

(v) This service must be provided in a provider operated or controlled non-residential setting, separate from the participant's private residence or other residential living arrangement.

004.08(B) ELIGIBLE PROVIDER TYPES. This service may be provided by Agency Providers.

004.09 HOME MODIFICATIONS. Home Modifications are physical adaptations to the participant's residence that are necessary for the health, welfare and safety of the participant, or are necessary to enable the participant to function with greater independence.

Home Modifications are provided within the current footprint of the residence. Such modifications include, but are not limited to:

1) Installation of ramps;
2) Widening of doorways;

3) Modification of bathroom facilities; and
4) Installation of specialized electric and plumbing systems that are necessary to accommodate the medical equipment and supplies that are necessary for the welfare of the participant.

004.09(A) LIMITATIONS. The following limitations apply to Home Modification:
(i) Home Modification has a budget cap of $10,000 per five year period. A request to exceed the cap may be approved by the Department based on critical health or safety concerns, available Waiver funding and other relevant factors;
(ii) Home modifications shall not be authorized for a residence that is provider-owned, provider-operated or provider-controlled. Home modifications may be authorized for a home owned by a participant's family or guardian in which the participant resides;
(iii) The Department may require an on-site environmental assessment, including an evaluation of functional necessity with an appropriate Medicaid-enrolled professional provider. The cost of the Environmental Modification Assessment is not included in the $10,000 budget cap for Home Modification;
(iv) Renter's insurance or homeowner's insurance is required and proof provided to the Department on request;
(v) Adaptations that add to the total square footage of the home are not allowed, except when necessary to complete an adaptation (for example, in order to improve entry to a residence or to configure a bathroom to accommodate a wheelchair);
(vi) Adaptations or improvements to the home that are of general utility and are not of direct medical or remedial benefit to the participant are not allowed; and
(vii) Adaptations will not be allowed if the home presents a health and safety risk to the participant, unless the risk is corrected by the approved Home Modifications.

004.09(B) ELIGIBLE PROVIDER TYPES. This service may be provided by Agency or Independent Providers.

004.10 HOMEMAKER SERVICE. Homemaker Service is the performance of general household activities such as meal preparation, laundry services, errands and routine household care. This service does not include direct care or supervision of the participant.

004.10(A) LIMITATIONS. The following limitations apply to Homemaker Service.
(i) Homemaker Services have an annual cap of 520 hours;
(ii) Homemaker Services are available only to participants age 18 and younger, residing in their family homes;
(iii) Homemaker Services must not duplicate or replace other supports available to the participant such as natural supports;
(iv) Homemaker Services are reimbursed at an hourly rate;
(v) Transportation is not included in the reimbursement rate for this service; and
(vi) Homemaker Services cannot be provided by a person who lives in the same private residence as the participant.

(vii) Homemaker service is only available when the individual regularly responsible for these activities is temporarily absent or unable to manage the home and care for him or herself or others in the home.

004.10(B) ELIGIBLE PROVIDER TYPES. This service may be provided by Agency or Independent Providers.

004.11 HOSPITAL SUPPORT. Hospital Support services are non-waiver, non-habilitative, individually-tailored, short-term supports that are available only during a participant's in-patient, acute care hospitalization for the optimal functioning and safety of the participant. These supports include strategies to maintain learned skills, address inappropriate behaviors and provide assistance with activities of daily living (ADL) to support the participant's optimal treatment and recovery.

Providers are not allowed to engage in any health maintenance activities, treatments, procedures, medication administration or practices that must be furnished by hospital staff.

The provider must be within immediate proximity of the participant and the participant must be awake and alert.

004.11(A) LIMITATIONS. The following limitations apply to Hospital Support:
(i) Hospital Support is reimbursed at an hourly rate;
(ii) Hospital Support is limited to 6 hours per day, for not more than 5 days per hospital stay;
(iii) The amount of authorized services does not come out of the participant's annual budget; and
(iv) Hospital Support services may be approved by the Department based on critical health or safety concerns, proof that all other resources, including natural supports, have been exhausted, availability of funding and other relevant factors.

004.11(B) ELIGIBLE PROVIDER TYPES. This service may be provided by Agency or Independent Providers.

004.12 IN-HOME RESIDENTIAL HABILITATION. In-home Residential Habilitation is a habilitative service that provides individually tailored supports that assist with the acquisition, retention or improvement in skills related to living in the community in the most integrated setting appropriate to the participant's needs. These supports include:
1) Adaptive skill development;
2) Assistance with activities of daily living (ADL);
3) Habilitative community inclusion;
4) Transportation;
5) Opportunities for practicing skills taught in therapies, counseling sessions, or other settings; and
6) Social and leisure skill development.

In-Home Residential Habilitation includes personal care, protective oversight and supervision.

004.12(A) LIMITATIONS. The following limitations apply to In-Home Residential Habilitation:

(i) In-Home Residential Habilitation service cannot be provided in a setting controlled or operated by the provider;
(ii) In-Home Residential Habilitation is provided to an individual, or group of 2, based on the assessed needs of the participant(s);
(iii) This service cannot be provided in conjunction with Habilitative Community Inclusion, Transportation, and Adult Companion services; and
(iv) In-Home Residential Habilitation service is reimbursed at an hourly rate.

004.12(B) ELIGIBLE PROVIDER TYPES. This service may be provided by Agency or Independent Providers.

004.13 PERSONAL EMERGENCY RESPONSE SYSTEM (PERS). Personal Emergency Response System (PERS) is an electronic device that enables a participant to secure help in an emergency.

The provider of the Personal Emergency Response System (PERS) is responsible for:

1) Instruction to the participant about how to use the Personal Emergency Response System (PERS) device;
2) Obtaining the participant's or authorized representative's signature verifying receipt of the Personal Emergency Response System (PERS) device;
3) Ensuring that response to device signals (where appropriate to the device) will be provided 24 hours per day, 7 days per week;
4) Ensuring that the participant has a functioning Personal Emergency Response System (PERS) device within 24 hours of notification of malfunction of the device;
5) Updating a list of responder and contact names, at least semi-annually, to ensure accurate and correct information;
6) Ensuring monthly testing of the Personal Emergency Response System (PERS) device; and
7) Furnishing ongoing assistance relating to instruction, use, and maintenance of the device.

004.13(A) LIMITATIONS. The following limitations apply to Personal Emergency Response System (PERS):

1) Personal Emergency Response System (PERS) shall not be authorized for a participant who resides in a residence that is provider-owned, provider-operated or provider-controlled;
2) Personal Emergency Response System (PERS) is reimbursed as a monthly rental fee or as a one-time installation fee, as applicable; and
3) Personal Emergency Response System (PERS) is limted to participants who live alone or who are alone for significant parts of the day and do not have a regular unpaid caregiver or provider for extended periods of time.

004.13(B) ELIGIBLE PROVIDER TYPES. This service may be provided by Agency Providers.

004.14 PREVOCATIONAL SERVICE. Prevocational Service is a habilitative service that provides learning and work experiences, including career planning, job searching and work experiences, where the participant can develop general, non-job-task-specific strengths and skills that contribute to future employability in paid employment in integrated community settings.

Prevocational Services may include career planning to prepare the participant to obtain, maintain or advance employment. Prevocational Services with focus on career planning includes development of self-awareness and assessment of skills, abilities and needs for self-identifying career goals and direction, including resume or business plan development for customized home businesses. Prevocational Services may involve assisting the participant in accessing an Employment Network, the Nebraska Work Incentive Network (WIN), Ticket to Work services, Work Incentive Planning and Assistance (WIPA) services, or other qualified service programs that provide benefits planning.

Prevocational Services may include job searching designed to assist the participant (or in limited situations on behalf of the participant), to locate a job or development of a work experience. Job searching with the participant will be provided on a one-to-one basis.

Prevocational Services also includes the provision of personal care and protective oversight and supervision (when applicable) to the participant.

Participation in Prevocational Services is not a required pre-requisite for Supported Employment - Individual or Supported Employment - Enclave services.

004.14(A) LIMITATIONS. The following limitations apply to Prevocational Service:

(i) Prevocational Services shall not exceed 12 consecutive months. Up to an additional 12 months may be approved by the Department with submission of an approved employment plan (through vocational rehabilitation, school district, or the Waiver) and showing active progress on finding employment opportunities, increasing work skills, time on tasks, or other job preparedness objectives;
(ii) Prevocational Service is reimbursed at an hourly rate; and
(iii) Transportation to and from the Prevocational Service is not included in the reimbursement rate for this service.

004.14(B) ELIGIBLE PROVIDER TYPES. This service may be provided by Agency or Independent Providers.

004.15 RESIDENTIAL HABILITATION. Residential Habilitation is a habilitative service that provides individually tailored supports that assist with the acquisition, retention or improvement in skills related to living in the community in the most integrated setting appropriate to the participant's needs. These supports include:

1) Adaptive skill development;
2) Assistance with activities of daily living (ADL);
3) Habilitative community inclusion;
4) Transportation;
5) Opportunities for practicing skills taught in therapies, counseling sessions, or other settings; and

6) Social and leisure skill development.

Residential habilitation includes personal care, protective oversight and supervision.

004.15(A) LIMITATIONS. The following limitations apply to Residential Habilitation:

(i) Residential Habilitation service shall only be authorized for a residence that is provider-owned, provider-operated or provider-controlled;
(ii) Residential Habilitation service cannot be provided in conjunction with Adult Companion Service or Transportation Service;
(iii) The provider is responsible for transporting the participant to and from the residential setting at no additional charge. Reimbursement for transportation is included in the rate for Residential Habilitation. The provider is responsible for all non-medical transports to and from services. When the provider transports participants, the provider must ensure that all participants are transported in a safe and comfortable manner that meets the needs of each participant; and
(iv) The provider must be in the residence with the participant providing service. Services for 8 or more hours in a 24-hour period 12:00am - 11:59pm will be paid at a daily rate, otherwise the service is reimbursed at an hourly rate.

004.15(B) ELIGIBLE PROVIDER TYPES. This service may be provided by Agency Providers.

004.16 RESPITE. Respite is a non-habilitative service furnished on a short-term, temporary basis as relief for the usual unpaid caregiver(s) living in the same private residence as the participant. Respite includes assistance with activities of daily living, health maintenance and supervision.

004.16(A) LIMITATIONS. The following limitations apply to Respite:

(i) Respite service in an institutional setting requires prior approval by the Department and is not authorized unless no other option is available. Respite service in an institutional setting shall be paid at a per-diem daily rate;
(ii) Respite service, other than in an institutional setting, is reimbursed in 15-minute increments or daily rate. Any use of Respite over 9 hours within a 24-hour period must be billed as a daily rate; use of Respite under 9 hours must be billed in 15 minute increments;
(iii) The maximum number of hours for participants is 360 hours per annual budget year. Unused Respite cannot be carried over into the next annual budget year. Respite provided at the daily rate counts as 9 hours towards the 360 hour annual maximum;
(iv) Transportation to and from the Respite service is not included in the reimbursement rate for this service;
(v) Respite services may not be provided during the same time period as other program services;
(vi) Respite services may not be provided by any Independent Provider living in the same private residence as the participant;
(vii) A Respite service provider or provider staff shall not provide respite services to persons 18 years and older and persons under 18 years of age at the same time and in the same location; and

(viii) An Independent Provider must have training in the following areas and provide evidence of current certificate of completion from a source approved by the Department:
  (1) State law reporting requirements and prevention of abuse, neglect and exploitation;
  (2) Cardiopulmonary resuscitation; and
  (3) Basic first aid.

004.16(B) ELIGIBLE PROVIDER TYPES. This service may be provided by Agency or Independent Providers.

004.17 SUPPORTED EMPLOYMENT – ENCLAVE. Supported Employment – Enclave is a habilitative service in which the provider employs participants, in groups, in regular business and industry settings.

Supported Employment - Enclave includes the acquisition of work skills, appropriate work behavior, and the behavioral and adaptive skills necessary to enable the participant to attain or maintain his or her maximum inclusion and personal accomplishment in the working community. Supported Employment - Enclave may include services not specifically related to job skill training that enable the participant to be successful in integrating into the job setting. The provider must obtain authorization to pay subminimum wage through the Nebraska Department of Labor.

004.17(A) LIMITATIONS. The following limitations apply to Supported Employment – Enclave:
  (i) Supported Employment - Enclave is billed at an hourly rate;
  (ii) Supported Employment - Enclave must be provided in a manner that promotes integration into the workplace and interaction between participants and individuals without disabilities in those workplaces; and
  (iii) This service cannot be provided in a setting ~~of~~or location controlled or operated by the provider.

004.17(B) ELIGIBLE PROVIDER TYPES. This service may be provided by Agency Providers.

004.18 SUPPORTED EMPLOYMENT – FOLLOW ALONG. Supported Employment – Follow Along is an individualized habilitative service that enables a participant to maintain employment in an integrated community employment setting. This employment is paid at or above the applicable minimum wage. This service is provided for, or on behalf of, a participant through intermittent and occasional job support, and communicating with the participant's employer. The provider must maintain contact with the employer and participant to reinforce and stabilize job placement.

The provider must observe and supervise the participant, teaching job tasks and monitoring at the work site a minimum of twice a month. The provider must facilitate natural supports at the work site and advocate for the participant, but only for purposes directly related to employment.

004.18(A) LIMITATIONS. The following limitations apply to Supported Employment – Follow Along:

(i) Supported Employment - Follow Along is billed at 15-minute increments not to exceed 25 hours annually; and
(ii) Supported Employment - Follow Along must be provided in an integrated community work environment where more than half the employees who work around the participant do not have a disability.

003.18(B) ELIGIBLE PROVIDER TYPES. This service may be provided by Agency or Independent Providers.

004.19 SUPPORTED EMPLOYMENT – INDIVIDUAL. Supported Employment – Individual is an individualized habilitative service designed to help a participant obtain and maintain competitive or customized employment, or self-employment, in an integrated work setting. This service is provided through formalized training and supports. The provider shall provide help to the participant in accessing the following services:

1) Employment Network:
2) The Nebraska Work Incentive Network (WIN);
3) Ticket to Work services;
4) Work Incentive Planning and Assistance (WIPA) services: or
5) Other qualified service programs that provide benefits planning.

Supported Employment - Individual includes adaptations, supervision, and training required by participants as a result of their disabilities, but does not include supervisory activities rendered as a normal part of the business setting. The employer is still responsible for all routine and ordinary employment matters.

004.19(A) LIMITATIONS. The following limitations apply to Supported Employment – Individual:

(i) Participants are required to receive at least the applicable minimum wage, except for self-employment;
(ii) Supported Employment - Individual service is reimbursed at an hourly rate; and
(iii) Transportation to and from the Supported Employment – Individual service is not included in the reimbursement rate for this service.

004.19(B) ELIGIBLE PROVIDER TYPES. This service may be provided by Agency or Independent Providers.

004.20 TRANSITIONAL SERVICES. Transitional Services are essential, non-recurring basic household set-up expenses needed for participants transitioning from an institution to a private residence that remove identified barriers or risks for the success of the transition. Transitional Services may be approved when a need remains and all other economic assistance resources are exhausted. Transitional Services includes items such as furniture, furnishings, household items, basic utility fees or deposits, and professional moving expenses.

004.20(A) LIMITATIONS. The following limitations apply to Transitional Services:

(i) Transitional Services have a participant budget cap of $1,500. A request to exceed the cap must be based on critical health or safety concerns, based on available Waiver funding and other relevant factors, and is subject to approval by the Department;

(ii) Approved Transitional Services shall be reimbursed directly to a provider, and not the participant;

(iii) Payment for rental deposit or rent is not allowed in this service;

(iv) Payment for personal care items, food or clothing, is not allowed in this service; and

(v) This service cannot be provided for a residence owned or controlled by the provider.

004.20(B) ELIGIBLE PROVIDER TYPES. This service may be provided by Agency or Independent Providers.

004.21 TRANSPORTATION SERVICE. Transportation is a non-habilitative service that enables participants to access program services, and community activities and resources. This service does not include transportation to medical appointments that is available under the Medicaid State Plan or other federal and state transportation programs. Transportation Service is not intended to replace formal or informal transportation options, like the use of natural supports.

Transportation providers must meet the same requirements as Medicaid Non-Emergency Transportation providers, with the exception that the participant's household can own their own vehicle.

The provider must ensure that all participants are transported in a safe and comfortable manner that meets the needs of each participant. The provider must ensure that:

1) Vehicles are adapted to meet the needs of all participants served. Participants must not be denied Transportation Services due to the lack of adaptation of vehicles;
2) Adequate measures are taken to provide a sufficient number of staff in the vehicle to ensure safety and to meet the needs of each particpant being transported; and
3) Each person transporting participants served:
   a) Has a valid driver's license with the appropriate class code;
   b) Has knowledge of state and local traffic rules;
   c) Is capable of assisting participants in and out of vehicles and to and from parking places, when required; and
   d) Has received training in first aid, cardiopulmonary resuscitation (CPR), and in meeting the needs of the specific participants for whom transportation is provided.

004.21(A) LIMITATIONS. The following limitations apply to Transportation Service:

(i) Provider reimbursement for transporting a participant to and from destinations must be calculated by using the most direct route;

(ii) Participant's annual budget cap for Transportation Service is $5,000. A request to exceed the cap must be based on critical health or safety concerns, based on available Waiver funding and other relevant factors, and is subject to approval by the Department;

(iii) Transportation is reimbursed per mile:
1) Agency provider mileage is reimbursed pursuant to Neb. Rev. Stat. §81-1176 times three; and
2) Independent provider mileage is reimbursed pursuant to Neb. Rev. Stat. §81-1176;

(iv) Public transit system transportation is reimbursed at the cost of a single ride pass; and

(v) The public transportation rate shall not exceed the rates charged to the general public.

004.21(B) ELIGIBLE PROVIDER TYPES. This service may be provided by Agency or Independent Providers.

004.22 VEHICLE MODIFICATIONS. Vehicle modifications are adaptations or alterations to a motor vehicle that is the participant's primary means of transportation in order to accommodate the special needs of the participant. The following are specifically excluded:

004.22(A) LIMITATIONS. The following limitations apply to Vehicle Modifications.

(i) Vehicle Modification services has a budget cap of $10,000 per five year period. A request to exceed the cap must be based on critical health or safety concerns, based on available Waiver funding and other relevant factors, and is subject to approval by the Department;

(ii) The Department may require an on-site assessment of the environmental concern including an evaluation of functional necessity with appropriate Medicaid enrolled professional provider. The cost of the Environmental Modification Assessment is not included in the $10,000 budget cap for Vehicle Modification;

(iii) Motor vehicle insurance is required and proof provided to the Department on request;

(iv) If the motor vehicle is leased, the proof that the modification is transferrable to the next motor vehicle must be provided before Vehicle Modification will be approved;

(v) Vehicle Modifications are limited to motor vehicles that are titled or leased in the name of the participant or a family member;

(vi) Adaptations or improvements to the vehicle that are of general utility, and are not of direct medical or remedial benefit to the participant are not allowed;

(vii) Vehicle Modification service cannot be used to purchase or lease a vehicle;

(viii) Purchase of existing adaptations or adaptations begun without prior authorization is not allowed; and

(ix) Regularly scheduled upkeep and maintenance of a vehicle except upkeep and maintenance of the modifications is not allowed.

004.22(B) ELIGIBLE PROVIDER TYPES. This service may be provided by Agency Providers.