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NEBRASKA DEPARTMENT OF HEALTH AND HUMAN SERVICES

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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.

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.