

TITLE 404 COMMUNITY-BASED SERVICES FOR INDIVIDUALS WITH  
DEVELOPMENTAL DISABILITIES

CHAPTER 10 CHILDREN'S WAIVER FAMILY SERVICES

10-001 OVERVIEW OF FAMILY SERVICES

10-001.01 Purpose: The Department authorizes family services under the Home and Community Based Medicaid Waiver for Children with Developmental Disabilities and Their Families (the children's waiver) to promote the child's independence and integration into the community and to allow the child's family to support him/her in the family home. Note: Family, as used in this chapter, means the usual non-paid caregiver with whom the child or adolescent resides.

10-001.01A Application: A child with developmental disabilities may apply for waiver services. To receive waiver services:

1. A slot must be available; and
2. The child must meet the criteria established for the children's waiver.

10-001.02 Waiver Eligibility: A child is eligible the children's waiver if s/he:

1. Is eligible for DD services;
2. Is less than 21 years old unless s/he is 21 years old and in special education, with an active IEP;
3. Does not receive services under another 1915(c) Home and Community-Based Service Waiver;
4. Currently receives ICF/MR services, or meets the ICF/MR level of care criteria (See 404 NAC 3-003.01D);
5. Is eligible for Medicaid;
6. Has received an explanation of ICF/MR services and community-based waiver services;
7. Has elected to receive waiver services;
8. Meets the priority criteria in 404 NAC 3-002.04E;
9. Has been assessed to benefit from habilitation;
10. Has an Individual and Family Support Plan (IFSP) which:
  - a. Has been developed by an IPP team;
  - b. Identifies a plan for DD services that will be implemented within 30 days; and
11. Has an eligibility assessment current within the last 12 months.

10-001.03 Types: Family waiver services include:

1. Respite;
2. Homemaker services;
3. Home modifications; and
4. Habilitative child care services.

10-001.04 Authorization: Family waiver services may be authorized if:

1. The child has been determined to be eligible for the children's waiver;
2. The child resides in his/her family home; and
3. The need and the amount for the specific service(s) are documented in the Individual and Family Support Plan (IFSP).

10-001.05 The Department will not authorize any funding or service for which the child's school system is responsible. Children's waiver services are not available during "regular" school hours and days for children receiving shortened school days, special education services in the family home or away from the school building, or for children who are home schooled.

10-001.06 Waiver services will not be furnished to a child while s/he is an inpatient of a hospital, nursing facility, or ICF/MR. Room and board is not included as a cost that is reimbursed under the children's waiver.

10-002 DESCRIPTIONS OF FAMILY WAIVER SERVICES

10-002.01 Respite: Respite is the temporary, intermittent relief to the non-paid family member from the continuous support and care of the child. Respite may be provided in the child's living situation or in the community in the non-specialized provider's home. If a hospital, ICF/MR, or nursing facility provides respite, the child is not considered a facility resident under the children's waiver. Components of respite service are:

1. Supervision;
2. Tasks related to the child's physical and psychological needs; and
3. Social/recreational activities.

10-002.02 Homemaker: Homemaker services are the general household activities necessary for maintaining and operating the child's family home to allow the usual caregiver to attend to and nurture the individual. The following specific services may be authorized as homemaker services.

10-002.02A Escort Service: A child receiving escort services is accompanied to obtain services, other than education, such as medical, dental, therapies, and behavioral health counseling because the child is unable to travel or wait alone.

10-002.02B Errand Service: Generally, the child does not accompany the provider on errand services, such as picking up the child's prescription or specialized equipment.

10-002.02C Essential Shopping: A provider of essential shopping services buys clothing or personal care items for the child, or food for the family.

10-002.02D Food Preparation: The family must supply the necessary food and kitchen equipment when a provider of food preparation services prepares meals.

10-002.02E Housekeeping Activities: The family must supply necessary cleaning products and equipment when a provider of housekeeping services cleans or cares for household equipment, appliances, or furnishings in the child's home.

10-002.02F Laundry Services: The family must supply necessary laundry products and equipment or machine use fees when a provider of laundry services washes, dries, irons, folds, or stores laundry for the child or the child's family.

10-002.03 Home Modifications: Home modifications are the physical adaptations to the home that are necessary to ensure the health, welfare, and safety of the individual or which enable the child to function with greater independence in the home.

10-002.03A Approvable modifications are limited to those necessary to maintain the child in the family's home. Examples of approvable home modifications include:

1. Installing ramps, lifts, door levers, and grab bars;
2. Building an accessible entrance into the home;
3. Widening interior doors to provide accessible routes of travel within the home to the bedroom, bathroom, and kitchen;
4. Modifying existing bathrooms to add roll-in showers, raised toilets, roll-under sinks; and
5. Adapting electric and plumbing systems to support assistive equipment, such as chair lifts and bathroom facilities.

10-002.03B Approvable modifications do not include adaptation or improvements to the home that are of general utility, and are not of direct medical or remedial benefit to the child. Examples of home modifications that are not approvable include:

1. Home maintenance and repair such as carpeting or roof repair;
2. Access to the basement for use as a storm shelter or recreation;
3. Recreational pools and decks;
4. Remodeling not related to accessibility or disability-related needs;
5. New construction (exception may be made in cases where the existing bathroom cannot be modified for accessibility);
6. Restrictive modifications that replace supervision, such as half-doors, fences, and security items. Items that assist in supervision and are specifically related to the child's needs due to disability may be considered, if necessary to ensure safety;
7. Central air conditioning; and
8. Adaptations that will add to the total square footage of the home (exception may be made in cases where the existing bathroom cannot be modified for accessibility).

10-002.03C Conditions of Approval

10-002.03C1 The Department will not approve home modification under the children's waiver if the adaptations are available under the Medicaid State Plan or from a third party source.

10-002.03C2 The provider of home modifications must comply with applicable state or local building codes and applicable standards of manufacturing, design, and installation.

10-002.03C3 The family home must not present a health and safety risk to the child other than that corrected by the approved home modifications.

10-002.03C4 If the family resides in a rental unit, the family must obtain written assurance from the landlord that the property will be made available to an individual with a disability for a period of at least three years after the funding of approved home modifications.

10-002.04 Habilitative Child Care: Habilitative child care is authorized to allow the child's usual non-paid caregiver(s) to accept or maintain employment. Note: The term "usual non-paid caregiver" means a person(s) who resides with the child, is not paid to provide services, and is responsible for the care and supervision of the child on a 24-hour basis. Any interventions provided as a component of habilitative childcare must be:

1. Consistent with any habilitation provided by the habilitation services provider;
2. Consistent with interventions provided by the educational services provider; and
3. Monitored by the service coordinator.

10-003 PROVIDER STANDARDS: These are the standards and conditions that all persons who provide children's waiver family services must meet.

10-003.01 General Standards

10-003.01A All providers of waiver services must be Medicaid providers as described in 471 NAC 2-000.

10-003.01B All providers of family services who have contact with the child receiving waiver services must:

1. Provide services in a manner demonstrating acceptance of, respect for, and a positive attitude toward people who are disabled;
2. Have training or experience in the performance of the services(s) being provided and be able to perform the tasks required for the child and family's needs;
3. Obtain adequate information on the supports necessary to meet the medical and personal needs of each child;
4. Observe and report all changes which affect the child and/or the child's plan to the service coordinator, taking action as necessary;

5. Have knowledge and understanding of the needs of individuals with developmental disabilities;
6. Exhibit the capacity to:
  - a. Assume responsibility;
  - b. Follow emergency procedures;
  - c. Maintain schedules; and
  - d. Adapt to new situations;
7. Protect the confidentiality of the child's and family's information;
8. Accept responsibility for the child's safety and/or property;
9. Exercise universal precautions in the delivery of services, have the physical capability to provide the service, and provide a physician's verification statement, if requested;
10. Continue to meet all applicable service-specific standards; and
11. Operate a drug-free workplace.

10-003.01C Family Members as Providers: The Department will not pay a family member as a provider under this waiver. Family member means the parent, spouse, or child of the individual in services or a person of the same relation by marriage.

10-003.02 General Conditions: All providers of family waiver services must:

1. Not be the usual non-paid caregiver or legally responsible relative;
2. Not be a member of the immediate household;
3. Not assign or transfer duties, responsibilities, or payment for the authorized service to any entity or person other than the provider named in the service provider agreement;
4. Not provide service before receiving a provider authorization for each service to each child;
5. Provide services only as authorized in accordance with Department standards;
6. Accept Medicaid reimbursement as payment in full for the authorized service with no additional charges made to the child or family for the authorized service;
7. Accept a rate which does not exceed the amount charged to private-paying persons;
8. Not discriminate in service provision between individuals receiving waiver services and other individuals;
9. Meet applicable licensure or certification requirements and maintain current licensure or certification;
10. Provide services as an independent contractor, if the provider is an individual, recognizing that s/he is not an employee of the Department or of the State;
11. Be a citizen of the United States or an alien who is authorized by the federal government to work in the United States;
12. Provide a Security number or federal identification (FID) number to the Department before contracting;
13. Submit a claim to the Department after service is provided and within 90 days;
14. Retain financial and statistical records for six years to support and document all claims;

15. Furnish all financial records at the request of the Department;
16. Permit the Department to monitor and evaluate services by:
  - a. Inspecting the facility;
  - b. Observing service delivery;
  - c. Interviewing the provider or the staff members; or
  - d. Similar methods;
16. Permit the Department to recover funds paid erroneously; and
17. Possess a valid driver's license and insurance as required by Nebraska law, if transportation is provided as a component of any waiver service.
18. For individual providers, attest that s/he is a citizen of the United States of America or a qualified alien under the federal Immigration and Nationality Act and is lawfully present in the United States:
  - a. Attestation: The applicant must attest that s/he is a citizen of the United States of America or that s/he is a qualified alien under the federal Immigration and Nationality Act, 8 USC 1101 et seq., as such act existed on January 1, 2009; and is lawfully present in the United States. The applicant must provide his/her immigration status and alien number, and agree to provide a copy of his/her United States Citizenship and Immigration Services (USCIS) documentation upon request.
  - b. Verification: For any applicant who has attested that s/he is a qualified alien under item 18.a. (above), eligibility must be verified through the Systematic Alien Verification for Entitlements Program. Until verification of eligibility is made, the attestation may be presumed to be proof of lawful presence unless the verification is required under another provision of state or federal law.

10-003.03 Record Keeping: Providers of waiver services must maintain for six years the following material:

1. Documentation which supports selection and provision of services under the IFSP to each child, including dates of service provision and identification of provider;
2. Financial information necessary to allow for an independent audit;
3. Documentation which supports requests for payment; and
4. Provider agreements.

10-003.04 Reports of Neglect or Abuse

10-003.04A Before entering into an annual provider agreement with individuals providing homemaker services involving direct individual contact, respite, or habilitative child care, the Department will complete a check of the:

1. Central Register of Child Protection Cases;
2. Adult Protective Services Central Registry;
3. The Department's License Information System; and
4. Nebraska State Patrol Sex Offender Registry.

10-003.04B The following persons must sign a statement agreeing to a check of the sources listed in 404 NAC 10-003.04A:

1. A person applying to be a provider of family services, before approval;
2. A provider of homemaker, respite, or habilitative child care services, annually;
3. Any member of the provider's household if services will be provided in the provider's home, before approval, and annually thereafter.

10-003.04C The Department will not authorize a person to provide children's waiver family services if the person has a substantiated report on the Adult Protective Services Central Registry or a substantiated report on the Central Register of Child Protection Cases.

10-003.04D If the Department receives a substantiated report on the Adult Protective Services Central Registry or a substantiated report on the Central Register of Child Protection Cases on a current waiver provider or household member when services are in the provider's home, the Department will immediately terminate the provider authorization.

10-003.04E The Department will not authorize a person on the Nebraska Sex Offender Registry to provide children's waiver family services services.

10-003.05 Criminal History

10-003.05A Felony or Misdemeanor Statements: The following persons must sign a statement giving information about current charges, pending indictments, and convictions for felony or misdemeanor actions:

1. A person applying to be a provider of family services, before approval;
2. A provider of children's waiver family services, annually;
3. Any member of the provider's household if services will be provided in the provider's home, before approval, and annually thereafter.

10-003.05B Follow-up Information: If additional information is needed to evaluate the criminal history of the provider or household member, the Department will:

1. Obtain a release of information from the provider or household member;  
and
2. Request information available from law enforcement.

10-003.05B1 The Department will deny or terminate the provider approval of an applicant or provider who refuses to sign a release of information.

10-003.05C Denial or Termination of Provider Agreement: The Department will not approve or will terminate as a provider of children's waiver family services any person who:

1. Has been convicted of, has admitted to, or against whom there is substantial evidence of crimes:
  - a. Against a child or vulnerable adult;
  - b. Involving intentional bodily harm;
  - c. Involving the illegal use of a controlled substance; or
  - d. Involving moral turpitude;
2. Has as a household member a person who has been convicted of, has admitted to, or against whom there is substantial evidence of crimes:
  - a. Against a child or vulnerable adult;
  - b. Involving intentional bodily harm;
  - c. Involving the illegal use of a controlled substance; or
  - d. Involving moral turpitude.

10-003.05D Provider's Right to Contest a Decision: A provider of children's waiver family services has the right to appeal for a hearing on an action that has a direct adverse effect on the provider (see 471 NAC 2-003 ff.). Hearings are scheduled and conducted according to the procedures in 465 NAC 6-000.

10-004 SPECIFIC SERVICE PROVIDER STANDARDS: These are the specific standards that persons who provide particular types of family services must meet whether operating independently or through an agency. Providers must meet general waiver provider standards and conditions and standards specific to each service provided.

10-004.01 Respite Provider Standards

10-004.01A: Respite providers must:

1. Be 19 years old or older. If no provider age 19 or older is available and acceptable to the family, and the child and family requests a younger provider, the Disability Services Specialist may authorize a younger provider, considering the following:
  - a. The functioning level of the child;
  - b. The availability of back-up assistance; and
  - c. The capacity of the provider to meet the child's needs in the case of an emergency;
2. Have knowledge of basic first aid skills and of emergency responses;
3. If s/he is less than 19 years old and not emancipated, have the service provider agreement signed by his/her parent or legal guardian;

4. Agree to never leave the child alone; and
5. Prepare and serve meals and snacks, as applicable.

10-004.01A1: If respite is provided by an agency, the agency must:

1. Employ respite staff based upon their qualification, experience, and demonstrated abilities;
2. Provide training to ensure that respite staff are qualified to provide the necessary level of care and agree to make training plans available to the Department, if requested;
3. Ensure adequate availability and quality of service; And
4. Ensure that individuals who are receiving respite services in a DD provider-managed location do not utilize the bed or other personal items of an individuals who resides at this location.

10-004.01B Out of Home Respite: When respite is provided outside the family home, the following conditions apply.

10-004.01B1 The child's parent is requested to visit the facility or home and agree to the provision of services in the facility or home.

10-004.01B2 The provider must ensure that:

1. The facility or home is architecturally designed to accommodate the needs of the individuals being served;
2. An operable telephone and emergency phone numbers are available;
3. The home/facility is accessible to the child, clean, in good repair, free from hazards, and free of rodents and insects;
4. The facility or home is equipped to provide comfortable temperature and ventilation conditions;
5. The toilet facilities are clean and in working order;
6. The eating areas and equipment are clean and in good repair;
7. The home/facility is free from fire hazards;
8. The furnace and water heater are located safely;
9. Firearms are in a locked unit;
10. Medications, harmful chemicals, and poisons are inaccessible; and,
11. Household pets have all necessary vaccinations.

10-004.02 Homemaker Provider Standards: A provider of homemaker services must:

1. Be 19 years old or older. If no provider age 19 or older is available and acceptable to the family, and the child and family requests a younger provider, the Disability Services Specialist may authorize a younger provider, considering the following:
  - a. The capacity of the provider to meet the child's needs in the case of an emergency; and
  - b. Which of the homemaker tasks will be authorized;

2. Exercise reasonable caution and care in the family's home and in the use of the family's equipment, appliances, and supplies;
3. Have training and/or home experience in carrying out homemaker services;
4. Provide any tools or equipment necessary to perform authorized tasks or duties, if the family does not provide them; and
5. If s/he is less than 19 years old and not emancipated, have the service provider agreement signed by his/her parent or legal guardian.

10-004.03 Home Modification Provider Standards: A provider of home modification services must:

1. Comply with applicable local and state building codes;
2. Be appropriately licensed/certified persons, when applicable;
3. Ensure all products and materials installed conform to specifications, unless blemished, seconds, or reused building materials are stated in the cost estimate and prior approval;
4. Accept responsibility for repair of all surfaces including furniture, walls, floor covering, doors, woodwork and trim, exterior pavement and yards, equipment and fixtures affected during the course of constructions, to original or better condition;
5. Warrant all work, materials, and products for a minimum of one year;
6. Ensure any and all subcontractors' work will conform to the terms and conditions of this contract and accept sole responsibility; and
7. If s/he is less than 19 years old and not emancipated, have the service provider agreement signed by his/her parent or legal guardian.

10-004.04 Habilitative Child Care Provider Standards: A provider of habilitative child care services must:

1. Be 19 years old or older. If no provider age 19 or older is available and acceptable to the family, and the child and family requests a younger provider, the Disability Services Specialist may authorize a younger provider, considering the following:
  - a. The functioning level of the child;
  - b. The availability of back-up assistance; and
  - c. The capacity of the provider to meet the child's needs in the case of an emergency;
2. If outside of the individual's home, provide care at a site licensed, certified, or approved by the Department;
3. Meet child care provider standards as specified in state regulations; and
4. If s/he is less than 19 years old and not emancipated, have the service provider agreement signed by his/her parent or legal guardian.

10-005 ANNUAL ENROLLMENT OF CHILDREN'S WAIVER FAMILY SERVICES PROVIDERS: A person proposing to provide family services must enroll annually.

10-005.01 Proposal: To submit a children's waiver family services provider proposal:

1. The family must choose a provider; and

2. The chosen provider must submit a completed Waiver Services Provider Proposal form to the Department.

10-005.02 Service Provider Agreement: If the chosen provider meets the required applicable standards in 404 NAC 10-004, the Department will enter into a provider agreement with the provider using the:

1. Service Provider Agreement ;
2. Service Provider Addendum ;
3. Approved Family Child Care Home Self-Certification Checklist and/or In-Home Child Care Self-Certification Checklist , when applicable;
4. IRS Form W-9, "Request for Taxpayer Identification Number and Certification";
5. Range of rates established by the Department.

10-005.03 Department Staff Relatives as Providers: Department staff must not approve, reapprove, evaluate, or negotiate provider agreements with, or authorize service provision from, providers to whom the Department staff person is related. In situations where a Department staff person's relative is the only resource, staff must obtain approval from the Service Area administrator or designee.

10-005.04 Renewal: Before expiration of the provider agreement, the provider must submit a new proposal and felony / misdemeanor statement(s).

#### 10-006 AUTHORIZATION OF CHILDREN'S WAIVER FAMILY SERVICES

10-006.01 Respite Services: The following applies to the authorization for the provision of respite services:

1. A unit is an hour when less than 8 hours are provided in a calendar day;
2. A unit is a day if eight or more hours are provided in a calendar day;
3. Respite can not exceed 30 days per waiver year (waiver year begins with the month the individual begins receiving waiver services);
4. Unused respite hours/days are not carried over into the next year;
5. Respite cannot be authorized when a household member is paid to deliver services to the child who is receiving waiver services; and
6. Respite funding is available from one the Department program source only.

10-006.02 Homemaker Services: The following applies to the authorization for the provision of homemaker services:

1. A unit is an hour;
2. Homemaker services cannot exceed 10 hours per week or 520 hours per waiver year; and
3. Unused homemaker hours are not carried over into the next year.

10-006.03 Home Modifications: The following applies to the authorization for the provision of home modifications:

1. A unit is a job; and
2. Costs for initial modifications, maintenance, and further modifications cannot exceed those established by the Department.

10-006.04 Habilitative Child Care: The following applies to the authorization for the provision of habilitative child care services:

1. A unit is an hour when less than 6 hours are provided in a calendar day;
2. A unit is a partial day when 6 to 12 hours are provided in a calendar day;
3. The daily maximum is 12 hours of habilitative child care, or a combination of child care and respite; and
4. The Disability Services Specialist will consider parents' work schedules, child's school schedule, and estimated school absences, such as illness or medical appointments in the authorization of units.

10-006.05 General Provisions: The following applies to the authorization for the provision of family services:

1. The beginning date of authorization is the date that each family provider is approved to begin, or the date services begin;
2. The ending date of authorization is the ending date of the child's waiver year,
3. The maximum authorization period is 12 months; and
4. The Disability Services Specialist will consider the location (in home or out of home) in the authorization of services.

10-007 BILLING AND PAYMENT: Providers of children's waiver family services must submit claims and a service calendar, when applicable, for services rendered, to the individual or legal representative for review and approval. Once approved, claims will be submitted to Department staff for payment. The rates paid to providers of these services specified in the provider agreement must be usual and customary or less for similar services in the community.

10-007.01 Social Security Tax Withholding: The Department withholds Social Security taxes (Federal Insurance Contribution Act, FICA) when:

1. An in-home service is provided by an individual not affiliated with an agency; and
2. Services are provided in each calendar year in which the provider is paid a federally determined amount or more for services to one child. If earnings do not reach this annual amount for FICA service per child, the amount withheld for that year is refunded.

The Department remits to the Internal Revenue Service an amount equal to the current Social Security tax rate for specified "in-home" services. Half of this amount is withheld from the provider as the employee's share; the other half is provided by F & S on behalf of the individual employer.

10-007.02 Income Taxes: The Department does not withhold amounts for personal income tax purposes.