

# Family Support Waiver Public Comment Period

September 18 and 19, 2023

Presented by the Division of Developmental Disabilities  
Home and Community-Based Services

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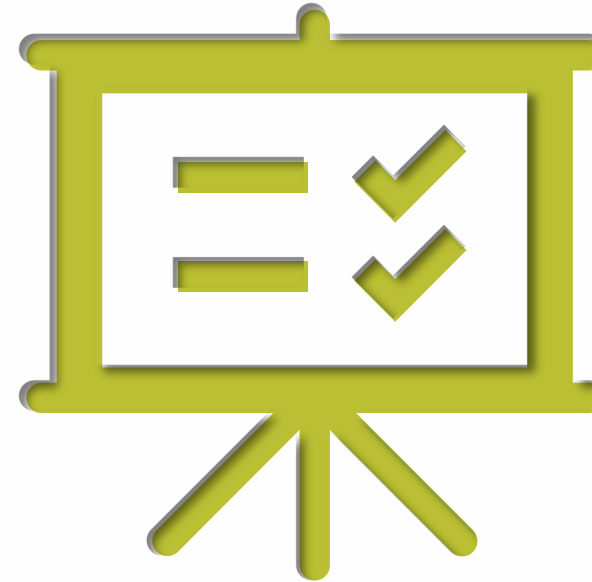
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# Agenda

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- Substantive Changes to the Previous Draft FSW Application
- General Information for All Waivers
- Overview of Family Support Waiver
- Overview of Appendices
- Timeline
- Resources
- Questions and Comments



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# Substantive Changes to Previous Draft of FSW

- Remove the Fiscal Management Service (FMS).
- Remove Participant Directed Goods and Services waiver service.
- Change provider training requirements to include Final Settings Rule training for the following services:
  - Respite
  - Child Day Hab.
  - Community Integration
  - Day Support
  - Family and Peer Mentoring
  - Independent Living
  - Supported Family Living
- Change phase-in schedule.

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## Application for a §1915(c) Home and Community-Based Services Waiver

### PURPOSE OF THE HCBS WAIVER PROGRAM

The Medicaid Home and Community-Based Services (HCBS) waiver program is authorized in §1915(c) of the Social Security Act. The program permits a state to furnish an array of home and community-based services that assist Medicaid beneficiaries to live in the community and avoid institutionalization. The State has broad discretion to design its waiver program to address the needs of the waivers target population. Waiver services complement and/or supplement the services that are available to participants through the Medicaid State plan and other federal, state and local public programs as well as the supports that families and communities provide.

The Centers for Medicare & Medicaid Services (CMS) recognizes that the design and operational features of a waiver program will vary depending on the specific needs of the target population, the resources available to the state, service delivery system structure, state goals and objectives, and other factors. A State has the latitude to design a waiver program that is cost-effective and employs a variety of service delivery approaches, including participant direction of services.

## Application for a §1915(c) Home and Community-Based Services Waiver

### I. Request Information (1 of 3)

A. The State of Nebraska requests approval for a Medicaid home and community-based services (HCBS) waiver under the authority of §1915(c) of the Social Security Act (the Act).

B. Program Title (optional - this title will be used to locate this waiver in the finder):

Family Support Waiver

C. Type of Request: new

Requested Approval Period: (For new waivers requesting five year approval periods, the waiver must serve individuals who are dually eligible for Medicaid and Medicare.)

3 years  5 years

New to replace waiver

Replacing Waiver Number:

Base Waiver Number:

Amendment Number

(if applicable):

Effective Date: (mm/dd/yyyy)

Draft ID: NE.024.00.00

D. Type of Waiver (select only one):

Regular Waiver

E. Proposed Effective Date: (mm/dd/yyyy)

03/01/24

### FRA Disclosure Statement

The purpose of this application is for states to request a Medicaid Section 1915(c) home and community-based services (HCBS) waiver. Section 1915(c) of the Social Security Act authorizes the Secretary of Health and Human Services to waive certain specific Medicaid statutory requirements so

# General Information for all Medicaid Home and Community Based 1915(c) Waivers

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# Medicaid Home and Community-Based Services (HCBS) Waivers

- Nebraska uses 1915 (c) HCBS waivers to waive certain Medicaid requirements in order to furnish an array of home and community-based services that promote community living for Medicaid beneficiaries and avoid institutionalization in a nursing facility, hospital, or Intermediate Care Facility for Individuals with Intellectual Disabilities (ICF/IID).
- To provide waiver services, Nebraska must submit an application to the federal Centers for Medicare and Medicaid (CMS) for a three-year initial and then at least every five years.
- In Nebraska, the Division of Developmental Disabilities (DDD) is responsible for Medicaid 1915 (c) HCBS Waivers.

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# Medicaid HCBS Waiver Services

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- Waiver services supplement services available through the Medicaid State Plan.
  - The State Plan is the official document describing the nature and scope of the Nebraska Medicaid Program.
  - State Plan Services are online at <https://dhhs.ne.gov/Pages/Medicaid-Services.aspx>
- Medicaid waiver funds are paid to waiver providers for services rendered.
  - All providers of waiver services must be Medicaid providers.
- Waiver funds cannot be:
  - Used for room and board, general home repair, or services available from other sources, such as Voc Rehabilitation or the educational system;
  - Used for things like ordinary childcare; or
  - Given directly to the participant.

# Medicaid HCBS Waiver Eligibility Requirements

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All people receiving services from a Nebraska Medicaid HCBS Waivers must:

- Be a citizen or legal resident of the US;
- Be a legal resident of the state of Nebraska;
- Be eligible for and receiving Nebraska Medicaid;
- Have a need for waiver services; and
- Meet the level of care requirement for the waiver they receive.

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# Nebraska's Medicaid HCBS Waivers

A person may meet eligibility requirements for more than one waiver but can *only receive services under one waiver at a time.*

- [Family Support Waiver \(FSW\)](#) – Ages **birth to 21 years**, eligible for DD services, and meet ICF/IID level of care. Intended to support the child and their family.
- [Developmental Disabilities Adult Day \(DDAD\) Waiver](#) – **Age 21 and older**, eligible for DD services, and meet ICF/IID level of care. Intended to maximize independence to work in the community; focus on competitive, integrated employment.
- [Comprehensive Developmental Disabilities \(CDD\) Waiver](#) – **All ages**, eligible for DD services, and meet ICF/IID level of care. Intended to maximize independence as people live, work, and socialize in their community.
- [Aged and Disabled \(AD\) Waiver](#) – **All ages with a physical disability** and ages 65 and older, meet nursing facility level of care. Intended to help people live safely in their own home or assisted living; instead of a nursing facility.
- [Traumatic Brain Injury \(TBI\) Waiver](#) – **Ages 18 and older**, meet nursing facility level of care. Intended to help people live safely in their own home or assisted living.



# Public Comments are Essential

When submitting a waiver application, it is an opportunity to provide input on the proposed Family Support Waiver.

**We want to consider what is important to participants, families, and providers.**



This is why *public comment periods* are vital.

Submit your comments September 8, 2023 through October 8, 2023.

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# After the Public Comment Period Ends

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- All comments received will be considered for changes to the draft Family Support Waiver.
- A summary of all comments, including any changes to the waiver application which resulted from public comment, will be posted on the DD website.
- A summary of public comments will be included in the waiver application when it is submitted to CMS.
- If public comments indicate a need for substantive change(s), the Family Support Waiver will be re-drafted and re-posted for another public comment period.

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# Proposed Draft Family Support Waiver (FSW) Overview

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# A New Nebraska Medicaid HCBS Waiver

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- The Family Support Waiver will be the fifth Nebraska HCBS Waiver.
- It is for children ages birth to 21 years old, who are eligible for DD services per NE statute, and meet ICF/IID level of care.
- The waiver is intended to reduce unmet needs for the child and their family.
- Per Neb. Rev. Stat. §§68-1529 – 68-1534, the Family Support Waiver will:
  - Serve up to 850 children with developmental disabilities and
  - Provide each child with a maximum annual budget of \$10,000.

# The Medicaid (HCBS) Waiver Application

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The waiver application contains 10 appendices:

- Appendix A: Waiver Administration and Operation
- Appendix B: Participant Access and Eligibility
- Appendix C: Participant Services
- Appendix D: Participant-Centered Planning and Service Delivery
- Appendix E: Participant Direction of Services
- Appendix F: Participant Rights
- Appendix G: Participant Safeguards
- Appendix H: Systems Improvement
- Appendix I: Financial Accountability
- Appendix J: Cost Neutrality Demonstration

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# Appendix A

## Administration and Operations

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# Appendix A: Administration and Operations

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- Nebraska is requesting a 3-year new waiver.
- DD waivers are administered by the Division of Developmental Disabilities (DDD), with oversight by the Division of Medicaid and Long-Term Care (MLTC).
- All providers, both independent and agency, must be enrolled through Maximus, which is Nebraska's Medicaid provider enrollment broker.

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# Appendix B

## Participant Access and Eligibility

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# Appendix B: Participant Access and Eligibility

To be eligible to receive developmental disabilities services, a person must have a developmental disability as defined in [Neb. Rev. Stat. §83-1205](#):

- A diagnosis prior to the age of 22 years that is expected to continue indefinitely,
  - A severe, chronic disability, including intellectual disability, other than mental illness, which is attributable to a mental or physical impairment.
- The disability must result in substantial functional limitations in each of the following areas of adaptive function:
  - **Conceptual** – language, literacy, money time, number concepts, and adaptive functioning.
  - **Social** – interpersonal, social responsibility, self-esteem, gullibility, wariness, social problem solving, ability to follow laws and rules and avoid being victimized.
  - **Practical** – daily living, personal care, occupational skills, healthcare, and mobility.
- Meet Intermediate Care Facility for Individuals with Intellectual Disabilities (ICF-IID) Level of Care.

# Appendix B: Participant Access and Eligibility, cont.

- The waiver is based on the ICF/IID Level of Care.
- An assessment is completed to determine if a person requires the same level of support and services provided in an ICF/IID.
- The level of care assessment tool must show:
  - The person's skills, abilities, preferences, and needs are similar to people living at an ICF/IID; and
  - The need to receive habilitative services and supports similar to what is provided in an ICF/IID.
    - Habilitation is teaching a participant the needed skills to be independent as possible in their daily life.

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# Appendix B: Participant Access and Eligibility, cont.

## Funding Priorities per Neb. Rev. Stat. §68-1532:

1. Children with disabilities and family units in crisis situations in which the child tends to self-injure or injure siblings and other family members.
2. Children with disabilities who are at risk for placement in juvenile detention centers, other institutional settings, or out-of-home placements.
3. Children with disabilities whose primary caretakers are grandparents because no other family caregivers are available to provide care.
4. Families who have more than one child with disabilities living in the family home.
5. Based on the date of application.

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# Appendix C

## Participant Services

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# Appendix C: Participant Services

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## Existing Services

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# Assistive Technology

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- Equipment or product systems such as devices, controls, or appliances.
- Used to increase, maintain, or improve independence in activities of daily living.
- For participants who live in their own homes.
- Includes purchasing or leasing, customizing, repairing, and training.
- Provided by Agency and Independent providers.

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# Child Day Habilitation

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- Habilitative service designed to teach or improve upon learned skills.
- In a community provider setting.
- Includes supplementary staffing to meet exceptional care needs in a childcare setting.
- Includes personal care, health maintenance, supervision, and protective oversight beyond what is ordinarily provided to a child without a disability or special health conditions.
- Does not include the cost of regular childcare.
- Provided by Agency and Independent providers.

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# Community Integration

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- Habilitative service designed to teach skills that enhances social development.
- Primarily takes place in the community.
- Activities designed to foster greater independence, community networking, and personal choice.
- Includes assistance with activities of daily living, health maintenance, and supervision.
- Provided by Agency and Independent providers.

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# Day Supports

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- Habilitative service that includes activities and environments designed to foster teaching and learning skills, building positive social behavior and personal choice.
- In a provider-owned or controlled non-residential setting.
- Includes personal care, health maintenance, supervision, and protective oversight.
- Provided by Agency providers.

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# Environmental Modification Assessment

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- On-site assessment to determine appropriate and cost-effective:
  - Assistive technology;
  - Home modifications; or
  - Vehicle modifications.
- Functional evaluation to:
  - Ensure health, welfare, and safety;
  - Enable integration into the community; or
  - Increase function in the participant's private or family home.
- Provided by Agency and Independent providers.

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# Home Modifications

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- Physical adaptations to the participant's private or family home.
- Necessary to ensure the health, welfare, and safety of the participant or enable greater independence.
- Provided within the current foundation of residence.
- Does not include general improvements.
- Provided by Agency and Independent providers.

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# Homemaker

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- Performance of general household activities, such as:
  - Meal preparation;
  - Laundry services;
  - Errands; and
  - Routine household care.
- Available when a regularly responsible person is temporarily unable to manage the home.
- Does not include direct care or supervision.
- Provided by Agency and Independent providers.
- Requires provider to use Electronic Visit Verification (EVV).

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# Independent Living

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- Habilitative service focusing on learning, retaining, or improving skills related to living in the community.
- Includes learning activities of daily living, community living activities, transportation, and social and leisure skill development.
- Provided intermittently (not 24/7).
- Participant lives in their own private home in the community.
- Available for participants 19 years and older.
- Provided by Agency and Independent providers.
- Requires provider to use Electronic Visit Verification (EVV).

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# Personal Emergency Response System (PERS)

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- Electronic device to secure help in an emergency.
- Connected to a phone line.
- Includes instruction, 24/7 response to signal, maintenance of responder list, monthly testing, and ongoing assistance.
- Provided by Agency providers only.

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# Respite

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- Non-habilitative service.
- Short-term, temporary basis for relief of usual unpaid caregivers living in the same private residence.
- Includes assistance with activities of daily living, health maintenance, and supervision.
- In-home or out-of-home (community settings or provider's home).
- Includes the cost of camp fees.
- Annual cap of 240 hours.
- Provided by Agency and Independent providers.
- Requires provider to use Electronic Visit Verification (EVV).

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# Supported Family Living

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- Habilitative service focusing on learning, retaining, or improving skills related to living in the community.
- Includes learning activities of daily living, community living activities, transportation, and social and leisure skill development.
- Provided intermittently (not 24/7).
- Participant lives with family in their own private home.
- Provided by Agency and Independent providers.
- Requires provider to use Electronic Visit Verification (EVV).

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# Transportation

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- Enables participants to gain access to waiver services, community activities, and resources.
- Fosters greater independence and personal choice.
- Does not replace formal or informal options, such as natural supports.
- Does not include transportation to medical appointments.
- Provided by Agency and Independent providers.

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# Vehicle Modifications

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- Adaptations or alterations to an automobile or van that is the participant's primary means of transportation.
- Accommodates the special needs of the participant.
- Necessary to ensure the health, welfare, and safety of participant.
- Does not include general improvements.
- Provided by Agency providers.

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# Appendix C: Participant Services

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## New Services

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# Family and Peer Mentoring

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- Provides a mentor to provide support and guidance to the participant, the family, or both by sharing experiences, strategies, and resources.
- Outcome is to support the participant and family by enhancing their knowledge and skills in understanding available resources beyond those offered through the waiver.
- Provided by Agency providers.

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# Family Caregiver Training

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- Individualized training and education for unpaid caregiver living in the family home and supporting participant.
- Intended to build skills and knowledge of unpaid caregivers.
- May include topics such as:
  - Understanding disability;
  - Achieving greater competence and confidence in support; and
  - Develop or enhance parenting strategies.
- Must be necessary to achieve outcomes identified in the person-centered plan.
- Includes payment for registration and training fees.
- Annual cap of \$500.
- Provided by Agency providers.

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# Appendix D

## Participant-Centered Planning and Service Delivery

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## Appendix D: Participant-Centered Planning and Service Delivery

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- Service Coordination (SC) supports the participant in developing their person-centered plan, including:
  - Addressing unique preferences and needs;
  - Determine waiver and non-waiver services, interventions, strategies, and supports;
  - Creating a backup plan; and
  - Identifying paid and unpaid support to assist the participant.
- SC Monitoring
  - Monthly contact; and
  - In-Person and on-site at least quarterly and more often as needed.

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# Appendix E

## Participant Direction of Services

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# Appendix E: Participant Direction of Services

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- Self-direction of services promotes personal choice and gives the participant control over how, when, and by whom services are delivered.
- The Service Coordinator supports self-direction by facilitating a discussion of the self-directed services available, the budget, and the rights and responsibilities related with choosing self-directed services.
- Participants are responsible for finding, hiring, training and supervising, and dismissing independent providers (employees).

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# Appendix F

## Participant Rights

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# Appendix F: Participant Rights

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- Right to file a grievance or complaint.
  - Submitted by mailing, emailing, faxing, calling, or in person at any DHHS office.
  - Responded by designated DDD staff.
- Right to request a Fair Hearing to:
  - Dispute a Notice of Decision; or
  - Appeal an action, inaction, or failure to act with reasonable promptness.
  - To exercise this right, a petition must be filled with DDD.

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# Appendix G

## Participant Safeguards

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# Appendix G: Participant Safeguards

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- A Critical Incident Management Process is used to document, track, and analyze critical events/incidents.
- Safeguards include:
  - Incident reports required to DDD for events that may adversely affect the physical or emotional well-being; alleged or suspected cases of abuse, neglect, or exploitation; and emergency safety situations requiring the use of emergency safety interventions.
  - All instances of abuse, neglect, or exploitation must be reported to appropriate authorities to conduct a follow-up action.
  - The use of restraints or restrictive intervention is not allowed by any provider of waiver services.

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# Appendix H

# Quality Improvement Strategy

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# Appendix H: Quality Improvement Strategy

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- To ensure the health and safety of participants.
- Outlines a structured process for continuous assessment, monitoring, measuring, and evaluating operational and person-centered outcomes of DD waiver service delivery.
- A QI Committee meets at least quarterly and reviews data and reports including, but not limited to, statewide monitoring, critical incidents, complaints and investigations, Medicaid HCBS waiver performance measures, service utilization, post-payment claims, and certification surveys to identify trends and consider statewide changes to support service improvement.

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# Appendix I

## Financial Integrity and Accountability

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# Appendix I: Financial Integrity and Accountability

- Financial accountability and integrity are a joint responsibility of the DHHS Division of Developmental Disabilities, with assistance from Medicaid and Long-Term Care and DHHS Financial Services unit.
- Rates are at the direction of the Nebraska Legislature and are posted on the DHHS public website.
- Services are authorized using a state-mandated web-based case management system.
  - Provider payment can only occur when the service is authorized and provided.
  - Payments to providers can be audited.

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# Appendix J

## Cost Neutrality Demonstration

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# Appendix J: Cost Neutrality Demonstration

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- Cost neutrality is the cost of serving a participant in an ICF as compared to serving a participant in the community.
- Appendix J is a spreadsheet of rates and the formulas used to demonstrate the cost neutrality of waiver services.

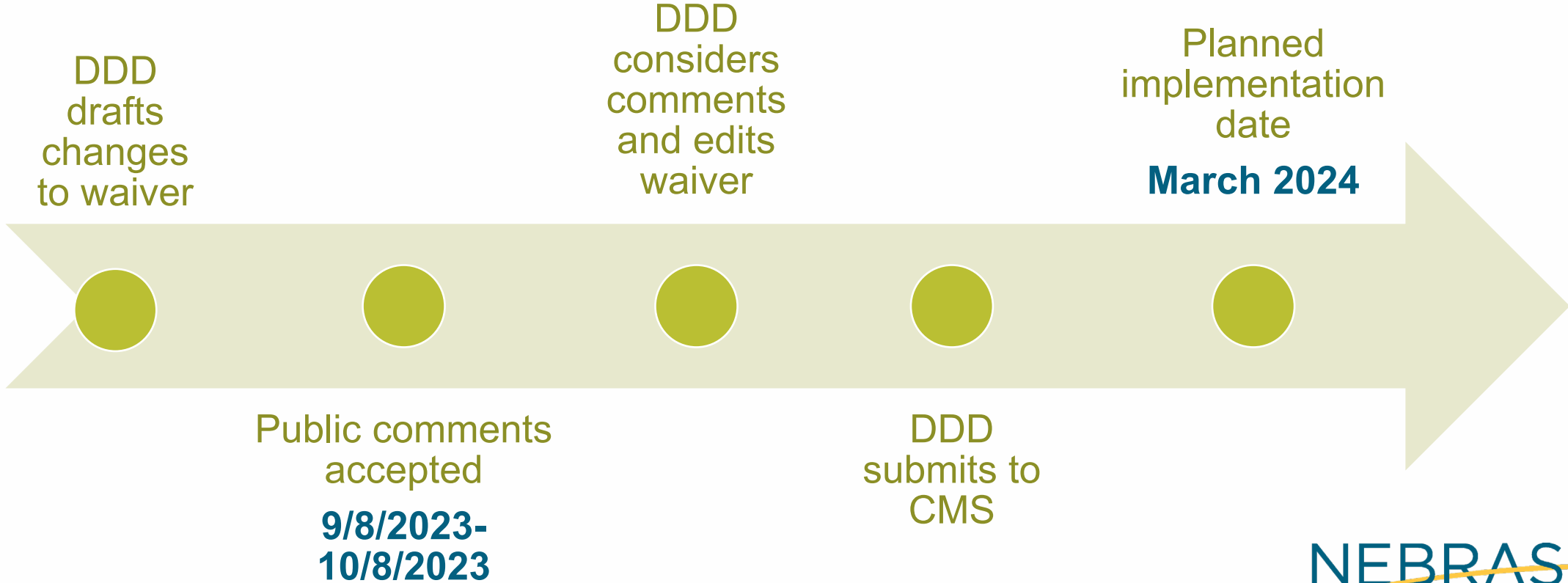
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# Family Support Waiver Timeline





# Resources

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- Comments on the proposed waiver can be emailed to:  
[DHHS.HCBSPublicComments@nebraska.gov](mailto:DHHS.HCBSPublicComments@nebraska.gov)
- Public Comment information on the DDD website:  
<https://dhhs.ne.gov/Pages/DD-Public-Comment.aspx>
- Draft FSW Waiver Application:  
<https://dhhs.ne.gov/DD%20Documents/Draft%20Family%20Support%20Waiver%20Application.PDF>

# SHARE YOUR THOUGHTS

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Presentations:

September 18, 2023 – Zoom at 4 PM, Central  
September 19, 2023 – Zoom at 8:30 AM, Central

**Public comments will be accepted  
September 8 through October 8, 2023.**

[DHHS.HCBSPublicComments@nebraska.gov](mailto:DHHS.HCBSPublicComments@nebraska.gov)



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