2019 Proposed Changes Reference Guide: Developmental Disabilities Day Services Waiver for Adults

- In 2017, the Medicaid Home and Community-Based (HCBS) Comprehensive Developmental Disabilities Services Waiver was approved with a Corrective Action Plan from the Centers for Medicare and Medicaid Services (CMS).
    - The Corrective Action Plan for this waiver outlined that the state needed to conduct a rate rebase, and change the manner in which host home (Extended Family Home) services are provided.
- This document is an overview of the proposed changes in the amendment that Nebraska is submitting in order to remediate the Corrective Action Plan.
    - The waiver is divided into the Intro-Main Section and Appendices A-J. Each section has proposed changes.
    - This document will outline the changes by appendix. The citation in parenthesis at the end of each change is where the change may be found in the actual draft amendment, posted for public comment.

- The public comment period for the draft amendment of the waiver was held December 10, 2018 – January 9, 2019. A document with responses to all comments received is available on the DHHS-DD public website.
- The waiver amendments were submitted to CMS for review on March 21, 2019.
- DHHS-DD received an informal request for additional information (RAI) from CMS on May 10, 2019.
    - Minor revisions were made in response to the RAI, including changes for consistent language and performance measures between the two DD waivers, added performance measures, and additional information about rate methodology, rate reimbursement, and cost neutrality.
- DHHS-DD received a formal RAI from CMS on June 19, 2019. The formal RAI stops the 90 day timeline for CMS review of the waiver, and restarts it when the state submits responses, so implementation was delayed.
    - A response to the formal RAI was submitted on July 12, 2019.
- DHHS-DD received an informal RAI from CMS on 8/22/2019. DHHS-DD continues to engage CMS in discussions to finalize the waiver amendments, and we are very close to approval.
    - DHHS-DD is working to respond to this RAI as soon as possible, and the planned effective date of the waiver amendments has been revised to October 1, 2019

- In Appendix B, D, E, F, and G of this amendment, the terms “guardian,” “family representative,” “representative,” and “legally responsible” were removed to align with Nebraska’s regulatory language. In this waiver, “participant” means the individual receiving waiver services and any person authorized to act on behalf of the participant.

- Abbreviations have been standardized when referencing Divisions of the Department of Health and Human Services. All begin with "DHHS-" then have a two letter abbreviation for the division being referenced:
    - Division of Developmental Disabilities: DHHS – DD
    - Division of Medicaid and Long-Term Care: DHHS – MLTC
    - Division of Public Health: DHHS – PH

Introduction/Main

- The Introduction/Main section of the waiver includes basic information about the waiver, such as:
    - A brief description of the waiver;
    - A recap of the waiver application components;
    - A transition plan, if any, for the waiver;
    - Additional requirements associated with the operation of a waiver;
    - State contact information; and,
    - The signature of the State Medicaid Director or designee.
- The transition plan section for the waiver was updated to reflect the transition plan for the new services in this waiver amendment. The transition plan includes 90 days from the implementation date of the amendments, for participants to transition to the new service options within each waiver. The services ending will no longer be available at the end of the 90-day transition period. (*Attachment #2*)

Appendix A: Waiver Administration and Operation

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Appendix A identifies that, in Nebraska, the waiver is overseen by the Division of Medicaid and Long-Term Care, and Division of Developmental Disabilities is responsible for the day-to-day waiver administration and operation.

- All changes made in Appendix A were to standardize language throughout the appendix:
    - Divisions were abbreviated in the same manner (DHHS-DD, DHHS-MLTC, and DHHS-PH)
    - In each area that Service Coordinators and Community Coordination Specialists were mentioned, wording was standardized as "Service Coordination" or "SC."
- Current performance measure A.2. ("Number and percent of assigned quality assurance reviews completed quarterly by the operating agency (Division of Developmental Disabilities) within the State Medicaid Agency.") replaced with:
    - "Percent of QI Committee meetings held by the Department of Health and Human Services Division of Developmental Disabilities (DHHS-DD)."
- Current performance measure A.3. ("Number and percent of initial DD provider applications that the provider enrollment broker screened.") replaced with:
    - "Percent of annual Medicaid provider screenings that the provider enrollment broker processed within the required timeframes."
- Performance measures A.4. and A.5. were removed.

Appendix B: Participant Access and Eligibility

Appendix B specifies the groups of Medicaid beneficiaries the waiver serves, how many participants the waiver serves, and processes associated with entry into the waiver (such as the assessments completed to determine eligibility and Level of Care, and how Nebraska manages its Reserve Capacity slots). It also clarifies that, in order for an individual to participate in the waiver, the individual must:

- Meet institutional (ICF/DD) level of care,
- Be in the waiver target group specified by the state,
- Be in a State plan Medicaid eligibility group that is included in the waiver, and
- Choose to receive waiver services rather than institutional services.

- Revised wording of Reserved Capacity category "Transition of Youth from Special Education Services" (*B-3-c-2*):
  - "Capacity is reserved for serving persons transitioning from the education system upon attaining twenty-one years of age to maintain skills and receive the day services necessary to pursue economic self-sufficiency."

- Revised language in Selection of Entrants to the Waiver to add the following (*B-3-f*):

  - Selection of individuals for entrance to the waiver is referred to priority funding and is defined in Nebr. Rev. St. § 83-1216. The priorities for funding the Medicaid HCBS DD waivers applicable to this waiver are as follows:

    1. Responding to an immediate crisis due to caregiver death, homelessness, or a threat to the life and safety of the person;
    2. Responding to the needs of persons that have resided in an institutional setting for a period of at least twelve consecutive months and who are requesting community-based services;
    3. Responding to the needs of wards of the department or persons placed 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;
    4. Responding to the needs of persons transitioning from the education system upon attaining twenty-one years of age to maintain skills and receive the day services necessary to pursue economic self-sufficiency;
    5. Responding to the needs of persons who are dependents of members of the armed forces of the United States who are legal residents of this state due to the service member's military assignment in Nebraska; and
    6. Responding to the needs of all other persons by date of application.

- Added "Other" specified groups in the "Medicaid Eligibility Groups Served in the Waiver." (*B-4-b*)

  - TMA
  - BBC/Women's Cancer
  - Deemed Newborns
  - DAC
  - Pickle
  - 1619(b) recipients
  - Disabled Widow(er)

- Increased the minimum frequency for the provision of waiver services from 60 to 90 days, and added clarifying language (*B-6-a-ii*):

- "The minimum frequency for the provision of the waiver service is ninety days. A participant's approved waiver slot will remain available to the participant when the participant is hospitalized, receiving rehabilitation services, receiving non-community based crisis services, or is incarcerated and cannot utilize a waiver service for ninety days. A request to keep the slot available beyond ninety days for a participant must be based on critical health or safety concerns and other relevant factors, and is subject to approval by the Department."

- Revised performance measures:
  - C.1. "Percent of participants reviewed for whom the initial ICF LOC determinations were completed using the correct LOC tool"
  - C.2. was removed.

<u>Appendix C:</u> Participant Services

Appendix C specifies all services offered in the waiver, service definitions, service limitations, and provider requirements.

- Modified the "Provider Qualifications → Other Standard" section after each service definition to state (*all services in C-1*):
  - All providers of waiver services must be a Medicaid provider, and must comply with all applicable licensure standards, Titles of the Nebraska Administrative Code, and Nebraska State Statutes.
  - All providers of waiver services must adhere to standards as described in the Division of Medicaid and Long-Term Care Service Provider Agreement.
  - A provider delivering direct services and supports must:
    - Not be an employee of DHHS, unless approved by DHHS as compliant with DHHS policy and applicable law and regulation.
    - Not be a legally responsible individual or guardian to the participant.
- Modified frequency of verification of providers to clarify revalidation is completed annually and re-enrollment is completed every 5 years. (*all services in C-1*)
- Removed Services (*C-1*):
  - Adult Companion and Crisis Intervention Support
- Added Services (*C-1*):
  - Independent Living and Supported Family Living
- Modified Services (*C-1*)::
  - Adult Day, Assistive Technology, Consultative Assessment, Enclave, Environmental Modification Assessment, Habilitative Community Inclusion, Habilitative Workshop, Home Modifications, Prevocational, Respite, Supported Employment-Follow Along, Supported Employment-Individual, Transitional, and Transportation.
    - Prevocational changed to a service that cannot be self-directed.
    - Removed annual budget cap for Transportation.
- Revised performance measures:
  - B.1.: "Percent of new enrolled non-licensed, non-certified providers that initially met required provider standards, as specified in the waiver, prior to providing waiver services." *(C-2-a-1 B.1.)*

- C.1: “Percent of certified providers that are providing waiver services for the approved waiver who met the training requirements, as specified in state regulations, at their certification review. (*C-2-a-1 C.1*)

➢ Added new performance measure C.2. “Percent of enrolled non-licensed, non-certified providers that are providing waiver services for the approved waiver who met the training requirements, as specified in state regulations, at their annual review.

Appendix D: Person-Centered Planning & Service Delivery

Appendix D addresses the development of the Individual Support Plan (ISP), and ISP implementation and monitoring.

➢ Removed Community Coordinator Specialist qualifications, and clarified qualifications for service coordination. (*D-1-a*)

➢ Replaced previous A.1 (“Number and percent of participants reviewed for whom all personal goals have been addressed in the Service Plan.”) with (*D-Quality Improvement-i-a A.1*):

- “Number and percent of service plans reviewed which reflect the participant’s goal(s).”

➢ Replaced previous A.2. (“Number and percent of participants reviewed for whom all assessed needs (including health and safety risk factors) have been addressed in the Service Plan”) with (D-Quality Improvement-i.a A.2.):

- “Percent of service plans reviewed that reflect the participant’s assessed needs (including health and safety risk factors).”

➢ Replaced previous C.1 (“Number and percent of participants reviewed whose Service Plans were revised, as needed, to address changing needs.”) with (*D-Quality Improvement-i-c C.1*):

- “Percent of service plans that were reviewed and revised as required during the service plan year.”

➢ Removed performance measure C.2. (“Number and percent of participants reviewed whose Service plans were update/revised on or before the annual review date.”)

Appendix E: Participant Direction of Services

Appendix E addresses the opportunity for participants to self-direct some or all of their waiver services.

➢ Updated Participant-directed services list to reflect added/removed services (*E-1-g*):

- Assistive Technology
- Consultative Assessment
- Environmental Modification Assessment
- Habilitative Community Inclusion
- Home Modifications
- Independent Living
- Respite
- Supported Employment – Follow Along
- Supported Employment – Individual
- Supported Family Living
- Transitional Service
- Transportation

Appendix F: Participant Rights

Appendix F addresses how participants are afforded the opportunity to request a Fair Hearing/Appeal, and how participants register grievances and complaints about their services.

- Added clarifying language about grievance/appeal process (*F-1*):
    - Included reasons why a participant may appeal/request a fair hearing on an action, inaction, or failure to act with reasonable promptness by DHHS-DD.
    - Included information that a participant must include on a petition for a fair hearing.

Appendix G: Participant Safeguards

Appendix G focuses on the identification and follow-up to critical events or incidents (General Event Reports – GER), such as abuse, neglect and exploitation, that bring harm, or create the potential for harm, to a waiver participant. This Appendix describes how Nebraska manages incidents at the individual and provider level, as well as its activities to assure that reports are filed and incidents investigated timely.

- Revised sections in which there was insufficient information, and standardized inconsistent language. (*G-1, G-2, G-3*)
- Revised Performance Measures:
    - Revised previous performance measure A.2. (" The number and percent of participants for whom an allegation of abuse, neglect, or exploitation was reported appropriately (as per Rule, policies, & procedures) & investigated as required") to: (*G-Quality Improvement-a-i A.2*)
        - "Percent of abuse, neglect, exploitation, and unexplained death incidents reviewed that were reported by the provider in the state incident management system no later than 24 hours after discovery, or as specified in DHHS-DD policies."
    - Replaced previous performance measure A.3. ("Percent of participants' deaths reported appropriately and investigated as required.") with: (*G-Quality Improvement-a-i A.3*)
        - "Percent of high General Event Reports (i.e. reportable incidents) reviewed that were completed in accordance with DHHS-DD policies."
    - Added performance measure A.4. "Percent of substantiated abuse, neglect, exploitation, and unexplained death incidents reviewed where follow-up was completed as required by DHHS-DD policies."
    - Removed previous performance measure B.1. "Number and percent of Risk Screens administered and acted upon in accordance with DHHS policies and procedures."
    - Replaced previous performance measure C.1. ("Number and percent of allegations regarding wrongful restraint and involuntary seclusion where investigations are conducted in accordance with 175 NAC 19-006.02.6.") with:
        - "Percent of incident reports regarding the use of unallowable restraint that document an investigation and actions were taken to address the incident in accordance with DHHS-DD policies."
    - Added performance measure C.2, "Percent of incident reports that document restraints were used in accordance with DHHS-DD policies."
    - Added performance measure C.3. "Percent of service plans reviewed that document restrictive interventions are used in accordance with DHHS-DD policies."

- Added performance measure C.4. “Percent of service plans reviewed that document all safeguards required by DHHS-DD policies are in place when rights restrictions are used.”
- Added performance measure C.5. “Percent of service plans reviewed for participants with a restrictive intervention used to address a safety concern related to a behavior that has a Functional Behavioral Assessment administered in accordance with DHHS policies and procedures in the case management file.”
- Replaced the two performance measures, D.1 and D.2, with: “Number and percent of service plans reviewed that document that the service provider is mitigating the risk(s) identified in the annual needs assessments.” (*G-Quality Improvement-a-I D.1*)
- Removed performance measure D.3. (*G-Quality Improvement-a-I D.3*)

Appendix H: Quality Improvement Strategy

Appendix H outlines the measures and processes, in relation to the Quality Improvement System (QIS), used to:

- Determine that each waiver assurance is met;
- Remediate identified problems;
- Analyze trends in the identification and remediation of problems;
- Establish priorities, develop strategies for, and assess implementation of system improvements; and
- Compile information and communicate to waiver participants, families, service providers, other interested parties, and the public.

Appendix H also defines the roles and responsibilities of the parties involved in measuring performance and making improvements and the frequency and processes used to evaluate and revise the QIS.

➢ Revised sections in which there was insufficient information, and standardized inconsistent language. (*H-a, H-b*)

Appendix I: Financial Accountability

Appendix I addresses the financial elements the waiver:

- Financial Integrity and Accountability (Appendix I-1)
- Rates, Billings and Claims (Appendix I-2)
- Payments (Appendix I-3)
- Non-Federal Matching Funds (Appendix I-4)
- Exclusion of Medicaid Payment for Room and Board (Appendix I-5)
- Payment for Rent and Food Expenses of an Unrelated Live-In Caregiver (Appendix I-6)
- Participant Co-Payments for Waiver Services and Other Cost Sharing (Appendix I-7)

➢ Updated rate determination method (*I-2-a*):

DHHS-DD contracted with Optumas Consulting to develop a rate modeling process for fee-for-service rates for the Medicaid HCBS DD waivers. DHHS-DD built the proposed rates by estimating the total costs incurred by providers to deliver developmental disabilities (DD) services. Each DD waiver service has its own individual rate model. The model begins with an estimate of the cost of direct labor required to provide the specific service. The rate that accounts for the total cost of the service is determined by applying

factors to this direct labor cost. The methodology for estimating the direct labor cost and all of the factors in the rate model are explained below:

1) Direct Labor Cost:
   The cost of direct labor for each service is based on the staffing requirements for the service and the classification of the employee. For each classification, an appropriate employment classification from the 2016 Bureau of Labor Statistics (BLS) was selected. Most of the services use the classification of Social and Human Service Assistants for direct care staff. Wages are inflated from the BLS data using the Consumer Price Index to account for inflation from the time when this data was collected to the anticipated implementation of this rate model.

2) Employee Related Expenses (ERE):

   This includes costs associated with employees of DD waiver service providers. These costs include FICA, retirement, unemployment compensation, health/dental/life insurance, and any other employee benefits. The ERE factor is based on actual costs in general ledger (GL) data submitted by providers. This GL data included actual revenue and expense data for a representative sample of DD waiver service providers for Nebraska state fiscal year 2016 (July 1, 2015 – June 30, 2016).

3) Availability Factor:

   This factor compensates providers for paid direct care staff time for non-billable activities including recordkeeping, reporting, training, and meetings. Additionally, it also compensates providers for paid time off for direct staff (holidays, sick, vacation) and overtime hours. The factor is based on payroll data submitted by a representative sample of DD waiver service providers for Nebraska state fiscal year 2016 and a training survey administered to the Provider Advisory Group (description below).

4) Mileage:

   This factor compensates providers for mileage while transporting the individual as part of DD waiver services. The rate is based on the 2018 rate published by the Internal Revenue Service for reimbursement of employees for personal vehicle usage.

5) Program Support:

   This factor is intended to cover the supports around direct care specific to the provision of services (as opposed to general and administrative expenses). Examples include clinical supports, nursing costs, and rent/maintenance associated with a building used for the delivery of service. This factor was estimated based on GL data submitted by providers.

6) Administration:

   This factor is intended to cover general and administrative expenses for the providers. These include indirect costs such as rent/depreciation, salaries & benefits, & background checks for staff for functions such as human resources, finance and accounting, and quality improvement.

DHHS-DD solicited feedback from stakeholders via the following three structured mechanisms:

1) Establishment of a Provider Advisory Group (PAG) consisting of agency providers of DD waiver services:

   This group consisted of 12 Agency providers that volunteered to provide feedback to DHHS-DD during the rate development process. DHHS-DD solicited feedback from the PAG via recurring meetings and requests for feedback following major milestones in the rate development process (e.g. introduction of new service definitions, presentation of draft rate models, etc.). The feedback provided by the PAG helped to inform assumptions in the rate model including staffing ratios in group homes, training

requirements for direct care staff, and “sloping” (i.e. adjusting the magnitude) of factors in the rate model for tiered services based on participant acuity level.

2) Independent Provider Meetings:

   Meetings were held with Independent Providers on March 27, 2018. Two sessions (afternoon and evening) were held to provide flexibility for attending these meetings. Independent providers could attend in-person in Lincoln, NE or via WebEx. DHHS-DD presented draft rate methodology and service definitions and solicited feedback from independent providers in these sessions.

3) Public Stakeholder Meeting:

   A two-hour public stakeholder meeting was held on June 19, 2018. Participants in this meeting included parents & guardians of waiver participants, service providers, and representatives from advocacy groups for individuals with developmental disabilities. The meeting provided an opportunity to present information about the rate development process to this audience and solicit feedback on the process.

DHHS-DD developed rates specific to independent providers based on stakeholder feedback and the goal of providing participants with additional options. DHHS-DD established independent provider rates to reflect additional habilitation opportunities for self-directed services and provider qualifications for habilitative services. The rate models for independent providers have different assumptions to compensate for differences compared to agency providers (e.g. there are no supervisory costs, lower ERE, and lower administrative costs).

Many of the DD waiver services incorporate a tiered rate structure to compensate providers based on the acuity of the participant. The following DD waiver services have tiered rates: Habilitative Workshop, Habilitative Community Inclusion, and Residential Habilitation (Continuous Home, Host Home, and Shared Living). The reimbursement for these services are tiered based on participant’s level of service need as determined by the ICAP assessment. The five reimbursement tiers are:

- Basic-ICAP score 65+.
- Intermediate-ICAP score 37-64.
- High–ICAP score 12-36.
- Advanced–ICAP score 1-11.
- Behavioral Risk Tier – based on results of a behavioral risk screen assessment by DHHS-DD clinical staff

Other DD waiver services have rate structures to accommodate service delivery one-on-one or in a group setting. This structure provides waiver participants the flexibility to purchase the services in a group setting at a lower cost. Prevocational, Independent Living, and Supported Family Living services are structured with both individual and group rates.

Rates established in accordance with this methodology may be adjusted at the direction of the Nebraska State Legislature.

The following DD waiver services use an alternative rate methodology:

Transitional Services, Environmental Modification Assessment, Home Modification, Assistive Technology, and Vehicle Modification are provided at a market rate and approved on a per case basis. Costs for services approved and service cap limits are reviewed annually.

Reimbursement for Transportation service is based on the Nebraska standard for mileage reimbursement, pursuant to Nebraska Revised Statute § 81-1176.

Information about payment rates is made available verbally and in writing to waiver participants and providers by state DHHS-DD staff. The waivers and rate study are posted on the DHHS public website at http://dhhs.ne.gov/developmental_disabilities/Pages/RateRebasing.aspx.

Appendix J: Cost Neutrality Demonstration

In order for a waiver to be approved, the state must provide, in Appendix J, verification to CMS that the waiver is cost neutral during each year that the waiver is in effect.

- Updated Cost Neutrality Demonstration for Years 2, 3, 4, and 5. (*For more information, see tables and formulas in Appendix J of the draft waiver amendment)*