

Response to Public Comment

To provide clarity and consistency in our responses, responses are noted here by category, reflected in the itemized summary of comments and questions received by the Department of Health and Human Services (DHHS) Division of Developmental Disabilities (DDD).

Service limits for personal care services

The division received 372 comments related to the change in service limits for personal care services on the Aged and Disabled (AD) and Traumatic Brain Injury (TBI) Waivers.

Public comments related to proposed Personal Care Service limits expressed concern that capping paid family or live-in caregiver hours at 40 per week (and imposing combined service limits of 70 hours) would be destabilizing and incompatible with the needs of individuals who require continuous or near-continuous support. Commenters emphasized many AD Waiver participants currently receive up to 112 hours of care per week due to complex medical, behavioral, or supervision needs, including ventilator care, medication administration, seizure monitoring, and overnight supervision. Families and providers argued a flat hourly cap disregards individualized assessments and person-centered planning, conflicts with Home and Community-Based Services (HCBS) requirements, and would create unavoidable gaps in care—particularly overnight and in rural areas where no outside workforce exists. Numerous comments suggested the proposed limits would lead to increased hospitalizations, mental health crises, abuse or neglect risks, and forced placement in nursing facilities that often lack capacity or the ability to meet complex needs.

A second area of focus was on the financial and workforce impacts. Commenters noted reducing paid caregiving from 112 hours to 40 hours per week represents a loss of income for many family caregivers, making it financially challenging for family caregivers to continue providing care. Many commentators stated replacement caregivers cannot be found at current Medicaid rates, cannot administer medications or make medical decisions, and frequently experience high turnover, undermining continuity and safety. Commenters emphasized limiting lower-cost family caregiving will ultimately increase spending for higher-cost institutional or agency-based care. A strong call across all comments was to withdraw or substantially revise the proposed hour caps; preserve flexibility and individualized exceptions; avoid reliance on unpaid “informal supports”; engage families and providers meaningfully; and ensure any cost-containment measures do not jeopardize health, safety, dignity, or the ability of individuals to remain in their homes and communities.

Response

The division appreciates the significant and thoughtful feedback received regarding the proposed personal care and companion service limitations under the Aged and Disabled (AD) Waiver, particularly concerns related to participant safety, caregiver sustainability, and workforce realities. Nebraska, like other states, continues to face substantial provider shortages, and the division recognizes the critical role that family and live-in caregivers play in ensuring continuity and quality of care. The proposed service framework is intended to better support individuals receiving services, protect caregivers from burnout,

and advance the shared goal of enabling participants to live safely in their own homes while broader workforce challenges are addressed. Personal Care (PC), Legally Responsible Individual Personal Care (LRI PC), and Companion services are intended to collectively address Activities of Daily Living (ADLs), Instrumental Activities of Daily Living (IADLs), and supervision needs as identified through the Service Needs Assessment (SNA) and reflected in the Person-Centered Plan (PCP).

Based on public comment and further review, while also acknowledging some individuals may appropriately require additional hours per week of in-home personal care, the division will make a responsive update to both waivers to remove the proposed 40-hour weekly limitation on personal care services as well as the 70-hour weekly limitation on Personal Care, LRI Personal Care, and Companion services.

Participant Access and Eligibility Individual Cost Limit

The division received 111 concerns related to the change in the cost limit on the AD and TBI Waivers.

Public comments raised concerns and questions about the proposed institutional cost limits, particularly the rationale for adopting a 150%/175% cap, how the “institutional average” was calculated, and what specific dollar amounts are being used. Commenters noted a single statewide average does not reflect the wide variation in acuity, especially for medically complex individuals (e.g., ventilator-dependent participants, individuals with tracheostomies, or significant behavioral needs). Many questioned whether high-cost facilities such as specialty nursing homes or state-operated centers, were included in the calculation and argued that relying on averages or bell-curve utilization ignores those whose institutional costs would far exceed the 175% threshold. There was also confusion about how combined HCBS waiver services and Medicaid state plan services count toward the limit, when high-utilization reviews are triggered, what the exception and appeal processes entail, and whether providers may continue to exceed caps during the transition period.

A central theme was the concern cost limits function as de facto hard caps that will force service reductions or referrals to institutional care once thresholds are reached, regardless of individual need. Commenters questioned why cost containment is being pursued through caps on home-based services when nursing facility care itself is uncapped and may not be available in all communities for all participants, depending on need. Families and providers argued high-need participants, institutional costs—particularly in specialized facilities—would significantly exceed the proposed caps. Several comments emphasized family-provided care and independent providers are frequently the most cost-effective option, and reducing hours or capping budgets may shift costs to hospitals, emergency services, or institutional placements rather than producing true savings.

Finally, many commenters questioned why these changes are being made now, whether alternative cost-control strategies were considered, and whether the limits comply with person-centered planning, Olmstead, and HCBS requirements.

Response

The division appreciates the extensive feedback received regarding the proposed individual cost limits. Under the Aged and Disabled (AD) Waiver, the individual cost limit is established by comparing the anticipated cost of home and community-based waiver services to the average cost of institutional care at the required level of care, in this case nursing facilities.

Based on this feedback, the Division has removed the institutional cost limit from Appendix B-2 in both waivers. Instead, the division has included a modified cap and exception process in Appendix C-4. This modified cap which will be triggered when participant waiver costs exceed 150% of the nursing facility institutional average will remain in place, with an exception process available, when services provided by out-of-home caregivers are necessary for the participant's immediate health and safety needs. This approach preserves the department's flexibility to meet person-centered needs and avoid institutionalization while providing a supportive framework of responsiveness to participant and live-in caregiver needs.

Provider Requirements

The division received ten comments expressing concern about the proposed changes to provider requirements for CPR and first aid certification in the AD and TBI Waivers.

Commenters sought clarification on several key issues, including how required training would be funded, the timeline for implementation, and the potential impact on recruiting and retaining qualified, confident providers. In particular, stakeholders requested specific guidance on the necessity of finger-print based background checks, what types of CPR and first aid certifications would be considered acceptable under the revised waiver requirements, including whether online-only training would meet compliance standards or whether in-person or blended training would be required. Several comments asked whether certifications issued by online platforms such as the National CPR Association, National CPR Foundation, or CPR Certification Institute would be approved by DHHS, and requested clear direction on acceptable training formats and sources to ensure providers can meet the requirements without creating unnecessary barriers to workforce participation.

Response

The division appreciates the feedback received regarding fingerprint-based background checks, CPR, and first aid certification requirements and understands the concerns related to training formats, costs, and workforce capacity. The proposed requirements will take effect on July 1, 2026, contingent upon approval of the current waiver proposal, and were included to align the Aged and Disabled Waiver with other Medicaid waivers and to ensure the ongoing health and safety of participants. Consistent with CMS expectations, providers are responsible for completing and maintaining their own required training, and the state does not reimburse providers for time spent attending training. Service Coordinators and resource developers can assist individuals and independent providers in identifying local training opportunities, including CPR and first aid certification, and DHHS will continue to offer free abuse and neglect training as an available support.

At this time, the Division will make revisions to both waivers in response to these comments. Agencies will not be required to collect finger print-based background checks from their employees. Additionally, providers of home-delivered meals will not be required to complete CPR and First Aid, but will need to complete abuse and neglect training. No additional updates will be made to provider requirements for other services, but the feedback will be carefully considered in the development of future waiver amendments.

Safeguards

The Division received 12 concerns related to safeguards for participants on the AD and TBI Waivers. Multiple comments questioned how individualized care plans would be developed and maintained under capped budgets, how respite and overnight or on-site care needs would be addressed, and who would

be responsible for care when authorized services are insufficient or unavailable due to workforce shortages. Overall, commenters emphasized the need for clearer safeguards, expanded and normalized exception pathways, and greater transparency to demonstrate to participants that safety and community-based living will not be compromised.

Response

Safeguards to ensure participant health and welfare are explicitly addressed within the waiver application in Appendix G. Appendix G describes the specific safeguards Nebraska has in place to protect participant health and welfare, all of which are subject to Centers for Medicare & Medicaid Services (CMS) review and approval as part of the waiver approval process. These safeguards are designed to ensure service planning remains responsive to individual needs and participants continue to receive appropriate supports in community-based settings.

At this time, the division does not believe additional changes to the proposed waiver language are necessary; however, the division anticipates developing additional guidance, tools, and resources prior to implementation to support participants, families, and providers and to ensure safeguards are applied consistently and effectively.

Guardian and Legally Responsible Individual

The division received four comments expressing concerns related to legal guardians and Legally Responsible Individuals (LRIs). These comments raised questions about minors having only legal guardians, the appropriateness of legal guardians serving as paid providers, and whether payments to legal guardians would be affected by the proposed waiver changes.

Response

A Legal Guardian is a person appointed by a court to serve as a guardian for an individual, while a Legally Responsible Individual (LRI) is defined as a spouse or the natural or adoptive parent of a minor child. Beginning July 1, 2025, Legal Guardians seeking to become AD Waiver providers for their wards must be related to the ward and serve as agency employees, except in limited circumstances. Current Legal Guardians who are already providing AD Waiver services may continue to do so regardless of their relationship to the participant or their independent provider status. **No changes were made to LRI or Guardian payment policies in this waiver renewal proposal, and no additional changes will be made at this time.** Legal Guardians may continue to provide services on both the AD and TBI Waivers under existing arrangements.

Participant Rights

The division received four comments raising concerns related to participant rights. These concerns focused primarily on the availability and clarity of the appeal process for waiver-related decisions, including how and when participants may challenge determinations that affect their services. Commenters also questioned whether the use of seatbelts could be considered a form of restraint, reflecting broader concerns about the protection of individual rights, autonomy, and compliance with federal HCBS requirements.

Response

Participants retain full due process rights when they disagree with an action or decision made by the division. When a determination is made, applicants and participants receive written notice that includes

clear information on how to request a fair hearing, consistent with state and federal requirements. With respect to restraints, the prohibition on restraints does not apply to the use of seatbelts or wheelchair securement systems when these devices are used solely as standard safety measures during transportation and are not intended to restrict an individual's freedom of movement. Individuals may direct the use of this equipment themselves, and its use is limited to ensuring safe transportation. The use of any device to restrict or control a person without their consent, or for purposes unrelated to transportation safety, is not permitted. **At this time, the division does not believe changes to waiver language or policy are necessary, as existing provisions adequately protect participant rights.**

Other Waiver Service Questions

The Division received six comments expressing concerns related to differences in service types and service definitions across programs and populations. These comments sought clarification on distinctions between assisted living and supported living, particularly regarding the level of oversight, staffing, and services provided in each setting. Commenters also questioned the differences between skilled nursing care and custodial nursing care, and how those distinctions affect service authorization and access. Additional concerns focused on the differences between personal care and chore services, including how each is defined, when each is appropriate, and how they are authorized within the waiver. Finally, commenters sought clarification regarding when Respite and Extra Care for Children with Disabilities services may be provided under the waiver.

Response

Assisted Living has been renamed Supported Residential Living to avoid naming services based on the entity providing them and to align the AD Waiver with the TBI Waiver, where this service name is already in use; this change allows the state to continue supporting participants residing in these settings. The AD Waiver does not cover skilled nursing services, as doing so would duplicate services already provided through Managed Care Organizations (MCOs), which remain responsible for all skilled care needs.

Personal Care services address assistance with Activities of Daily Living (ADLs), while Chore services support heavy household tasks necessary for maintaining an independent living environment; participants who demonstrate a need for both may receive both, and the alignment of LRI Personal Care and Personal Care supports a consistent, standardized approach across waivers.

Respite services may be provided only when the participant's usual caregiver is in an unpaid status.

With respect to Extra Care for Children with Disabilities, this service addresses medical and disability-related needs beyond routine supervision for children from birth through age 17 who require specialized support in childcare settings; it is available only when the child's usual caregiver is unavailable and is intended to support caregiver employment, job search, or participation in qualifying educational or vocational programs. While comparable services are not available for adults, the AD Waiver does offer Adult Day Health services, which provide structured health, social, and supportive activities outside the home to promote participant health, safety, and community engagement.

At this time, the division does not believe additional waiver changes are necessary.

Other Questions and Comments

The division received 40 additional questions and comments related to waivers and waiver services not directly associated with the proposed changes to the AD and TBI Waivers. These concerns included

questions about age parameters within the AD Waiver; how public comments are reviewed and responded to, assessments used by other Nebraska waivers; and division communication. Other comments addressed services provided through school districts, suggestions for improving the AD Waiver, requests to add habilitative services to the AD level of care, and perspectives on how waiver funding should be allocated.

Response

The AD Waiver does not have a maximum age limit. Individuals under age 65 are categorized within the physical disability subgroup, and beginning at age 65, transition to the aged subgroup; however, participants remain on the same waiver without interruption.

Services available through public education programs under the Individuals with Disabilities Education Act (IDEA) are excluded from the AD Waiver, and waiver services cannot be provided during school hours or in place of educational services, including for children who are homeschooled.

The division reviews all public comments and questions received through established public comment channels, as outlined on the public comment website, with review occurring throughout the comment period and again after it concludes in coordination with division leadership. Responses are published on the public website, and if substantive changes result from public input, the division will revise the waiver and return it to public comment as required. The AD and TBI Zoom sessions were intended to provide opportunities for participants to ask questions and share comments directly with division staff, and those comments were incorporated as fully as possible into the overall review.

The division appreciates the thoughtful feedback received on the AD and TBI Waivers and carefully considers all input as part of waiver development, with leadership evaluating proposed changes through the lens of fairness, safeguards, and the long-term sustainability of community-based services across the state.