

SECTION 2

UTAH COMMUNITY SUPPORTS WAIVER For INDIVIDUALS WITH INTELLECTUAL DISABILITIES OR OTHER RELATED CONDITIONS

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## 1 GENERAL POLICY

1. Under Section 1915(c) of the Social Security Act, a State may request approval through the federal Centers for Medicare and Medicaid Services (CMS) to “waive” certain statutory requirements in order to use Medicaid funds for an array of home and community-based services (HCBS) provided to eligible recipients as an alternative to institutional care. The State of Utah has provided Medicaid-reimbursed home and community-based waiver services to individuals with intellectual disabilities and other related conditions since July 1, 1987. The Division of Medicaid and Health Financing (DMHF) received approval from CMS through a waiver renewal process to continue operating the Community Supports Waiver for Individuals with Intellectual Disabilities or Other Related Conditions (Waiver) through June 30, 2015. The approval includes:

1. The waiver of comparability requirements in subsection 1902(a)(10)(B) of the Social Security Act. In contrast to Medicaid State Plan service requirements, under a waiver of comparability, the State is permitted to provide covered Waiver services to *a limited number* of eligible individuals who meet the level of care criteria for Medicaid reimbursement in an intermediate care facility for persons with intellectual disabilities (ICF/ID). The term ICF/ID, which is used in this document, is equivalent to intermediate care facility for persons with mental retardation (ICF/MR) under Federal law.

Waiver services need not be comparable in amount, duration or scope to services covered under the State Plan. However, each year the State must demonstrate that the Waiver is a cost-effective or a “cost-neutral” alternative to institutional (ICF/ID) services. This means that, in the aggregate, the total annual Medicaid expenditures for Waiver recipients, including their State Plan services, cannot exceed the estimated Medicaid expenditures had those same recipients received Medicaid-funded ICF/ID services.

2. The waiver of institutional deeming requirements in section 1902(a)(10)(C)(I)(III) of the Social Security Act. Under the waiver of institutional deeming requirements, the State uses more liberal eligibility income and resource calculations when determining recipients’ Medicaid eligibility.
2. The State Medicaid Agency (SMA) has ultimate administrative oversight and responsibility for the Waiver program. The day to day operations have been delegated to the Department of Human Services (DHS), Division of Services for People with Disabilities (DSPD), through an interagency agreement with the SMA. This agreement and the State Implementation Plan (SIP) describe the responsibilities that have been delegated to DSPD as the Operating Agency (OA) for the Waiver program.

### 1 - 1 Acronyms and Definitions

For purposes of the Waiver, the following acronyms and definitions apply:

<b>CMS</b>	Centers for Medicare and Medicaid Services
<b>CSW</b>	Community Supports Waiver
<b>DHS</b>	Department of Human Services

**DMHF** Division of Medicaid and Health Financing

**DOH** Department of Health

**DSPD** Division of Services for People with Disabilities

**HCBS** Home and Community-Based Services

**ICF/ID** Intermediate Care Facility for Persons with Intellectual Disabilities

\*This is equivalent to intermediate care facility for persons with mental retardation (ICF/MR) under Federal law.

**MAR** Maximum Allowable Rate

**NOA** Notice of Action

**OA** Operating Agency

**PCSP** Person Centered Support Plan

**PHI** Personal and Protected Health Information

**PII** Personal Identifiable Information

**QIDP** Qualified Intellectual Disabilities Professional

\*This is equivalent to Qualified Mental Retardation Professional (QMRP) under Federal law.

**RAS** Request for Additional Services

**RFP** **Request for Proposal**

**SIP** State Implementation Plan

**SMA** State Medicaid Agency

## 1 - 2 CMS Approved State Implementation Plan

A. The CMS approved SIP for the Community Supports Waiver (CSW or Waiver) serves as the State's authority to provide HCBS to the target group under its Medicaid plan. The SIP and all attachments constitute the terms and conditions of the program.

B. This manual does not contain the full scope of the SIP. To understand the full scope and requirements of the Waiver, providers should refer to the SIP. In the event provisions of this manual are found to be in conflict with the SIP, the SIP will take precedent.

## 2 SERVICE AVAILABILITY

Waiver services are covered benefits only when provided to an individual determined to meet the eligibility criteria defined in the current Community Supports Waiver SIP and only pursuant to a written Person Centered Support Plan (PCSP) that has been approved by DSPD.

## **2 - 1 Eligibility for Community Supports Waiver Services**

1. Waiver services are limited to individuals with the following condition(s):
  1. Must have a diagnosis of mental retardation as per 42CFR483.102(b)(3) or a condition closely related to mental retardation as per 42CFR435.1010.
  2. Conditions closely related to mental retardation do not include individuals whose functional limitations are due solely to mental illness, substance abuse, personality disorder, hearing impairment, visual impairment, learning disabilities, behavior disorders, physical problems, borderline intellectual functioning, communication or language disorders, aging process, terminal illnesses, or developmental disabilities that do not result in an intellectual impairment.
2. In addition, individuals served in this Waiver program must also demonstrate substantial functional limitations in three or more areas of major life activity and meet the ICF/ID level of care criteria as described in Utah Administrative Rule 414-502-8.
3. This Waiver is limited to persons with disabilities who have established eligibility for State matching funds through DHS in accordance with UCA 62A-5. If the Waiver applicant is determined to be ineligible for state matching funds through DHS, the participant will be given an opportunity to appeal the decision through the DHS hearing process as described in Section 2-5 of this provider manual. Decisions made through the DHS hearing process on the question of DSPD eligibility will be the final decision.
4. If a person is eligible for more than one of the waivers operated by DSPD, the division will educate the individual about their choices and will advise the individual about which of the waivers will likely best meet their needs.
5. An individual will not be enrolled if it is determined during the eligibility assessment process that the health, welfare, and safety of the individual cannot be maintained through the Waiver.
6. Inpatients of hospitals, nursing facilities, or ICFs/ID are not eligible to receive Waiver services (except as specifically permitted for support coordination discharge planning in the 90-day period prior to their discharge to the Waiver).

## **2 - 2 Applicant Freedom of Choice of ICF/ID or Waiver**

- When an individual is determined eligible for Waiver services, the individual and the individual's legal representative if applicable, will be informed of the alternatives available under the Waiver and offered the choice of institutional care (ICF/ID) or home and community-based care.
- A copy of the DSPD publication *AN INTRODUCTORY GUIDE—Division of Services for People with Disabilities* (Guide), which describes the array of services and supports available in Utah through both ICFs/ID and the HCBS waiver programs, is given to each individual applying for Waiver services. In

addition, during the intake process individuals will be given a 2-sided *Informational Fact Sheet* (Form IFS-10) which describes the eligibility criteria and services available through both the Waiver program and through ICFs/ID, including contact information for DSPD Intake and for each of the ICFs/ID throughout the state.

- If no available capacity exists in the Waiver, the applicant will be advised that he or she may access services through an ICF/ID or may wait for open capacity to develop in the Waiver.
- If available capacity exists in the Waiver, a pre-enrollment screening of health, welfare, and safety needs will be completed by a Waiver representative. The applicant will be advised of the preliminary needs identified and given the opportunity to choose to receive services to meet the identified needs through an ICF/ID or the Waiver. The applicant's choice will be documented in writing, signed by the applicant, and maintained as part of the individual record.
  1. Choice of waiver services will only be offered if:
    - i. The individual's needs assessment indicates the services the individual requires, including Waiver services, are available in the community;
    - ii. The PSCP has been agreed to by all parties; and
    - iii. The health and safety of the individual can be adequately protected in relation to the delivery of Waiver services and supports.
- Once the individual has chosen home and community-based waiver services, the choice has been documented in USTEPS by the Support Coordinator and the individual has received a copy of the Guide and the Informational Fact Sheet, subsequent review of choice of program will only be required at the time a substantial change in the enrollee's condition results in a change in the PCSP. It is, however, the individual's option to choose institutional (ICF/ID) care at any time during the period they are in the waiver.
- If the participant is not given the choice of HCBS as an alternative to institutional care, the participant will be given an opportunity for a fair hearing as described in Section 2-5 of this provider manual.

## **2 - 3 Waiver Participant Freedom of Choice**

- A. Upon enrollment in the Waiver, the individual, and the individual's legal guardian if applicable, will be given choice among available Waiver support coordination agencies. The applicant's choice will be documented in the case record.
- B. Upon completion of the comprehensive assessment instrument by the DSPD Evaluation Specialist, the individual and the individual's legal representatives if applicable, in conjunction with the support coordination agency and any others that the individual wishes to invite, will participate in the development of the PCSP to address the individual's identified needs.
- C. The waiver participant, and the individual's legal representative if applicable, will be given the opportunity to choose the providers of waiver services identified on the PCSP if more than one qualified provider is available to render the services. The individual's choice of providers will be documented in the PCSP.

- D. The waiver support coordination agency will review the contents of the written PCSP with the participant prior to implementation. If the participant is denied the waiver service(s) or their choice or the waiver provider(s) of their choice, they will be given an opportunity in writing for a fair hearing as described in Section 2-5 of this provider manual.
- E. Subsequent revision of the participant's PCSP as a result of annual re-assessment or significant change in the participant's health, welfare, or safety requires proper notice to the participant as described in item D above, plus notice that the participant has the right to select to receive services in a Medicaid ICF/ID in lieu of continued participation in the waiver.

#### 2 - 4 Termination of Home and Community-Based Waiver Services

- A. When the need arises, participants are separated from the Home and Community Based waiver program through a disenrollment process.
  - 1. The disenrollment process is a coordinated effort between DMHF and DSPD that is expected to facilitate the following:
    - i. Appropriate disenrollment and movement among waiver programs when applicable;
    - ii. Effective utilization of waiver program potential;
    - iii. Effective discharge and transition planning;
    - iv. Provision of information, affording participants the opportunity to exercise all applicable waiver rights; and
    - v. Program quality assurance/quality improvement measures.
- B. All of the various circumstances for which it is permissible for DSPD to disenroll an individual from the waiver program can be grouped into three distinct disenrollment categories.
  - 1. Voluntary disenrollments are cases in which participants, or their legal representatives when applicable, choose to initiate disenrollment from the waiver. Disenrollments are also considered voluntary when the waiver participant enters a skilled nursing facility for a stay of less than 90 days and chooses not to transition back to the original waiver program. This includes cases in which the participant transitions to another waiver program from the skilled nursing facility.

Voluntary disenrollments require Support Coordinators to notify their DSPD program manager. DSPD, either through the program manager or other authorized designee, will in turn send written notification to DMHF within 10 days from the date of disenrollment. No DMHF prior review or approval of the decision to disenroll is required. Documentation will be maintained by DSPD and should include a written statement signed by the participant or their legal representative when applicable detailing their intent to disenroll from the waiver program as well as discharge planning activities completed by the Support Coordinator with the waiver participant as part of the disenrollment process.

2. Pre-Approved involuntary disenrollments are cases in which participants are involuntarily disenrolled from the waiver for any of the following reasons including:
  - i. Death of the participant;
  - ii. Participant is determined ineligible for Medicaid services by the Department of Workforce Services as a result of no longer meeting the financial requirements for Medicaid eligibility; or
  - iii. Participant enters a skilled nursing facility for a stay of more than 90 days.

Pre-Approved involuntary disenrollments require Support Coordinators to notify their DSPD program manager. DSPD, either through the program manager or other authorized designee, will in turn send written notification to DMHF within 10 days from the date of disenrollment. No DMHF prior review or approval of the decision to disenroll is required as the reasons for pre-approved involuntary disenrollment have already been approved by the SMA. Documentation will be maintained by DSPD, detailing the discharge planning activities completed with the waiver participant as part of the disenrollment process when appropriate.

3. Special circumstance disenrollments are cases in which participants are disenrolled from the waiver for reasons that are non-routine in nature. These cases require prior review and approval by DMHF and involve circumstances that are specific to the participant involved. Examples of this type of disenrollment include:
  - i. Participant no longer meets the institutional level of care requirements for the Waiver: ICF/ID;
  - ii. Participant's health and safety needs cannot be met by the Waiver program's services and supports;
  - iii. Participant has demonstrated non-compliance with the agreed upon care plan and is unwilling to negotiate a PCSP that meets minimal safety standards;
  - iv. Participant has demonstrated non-compliance with a signed participant agreement with DSPD;
  - v. Participant, or their legal representative when applicable, requests a transfer of the participant from the CSW directly to another waiver program when a stay at a nursing facility has not been involved; and/or
  - vi. Participant's whereabouts are unknown for more than 30 days and participant has not yet been determined ineligible for Medicaid services by the Department of Workforce Services.

The special circumstance disenrollment review process will consist of the following activities:

- a. The Support Coordinator shall compile information to articulate the disenrollment rationale.
- b. Support Coordinator will then submit disenrollment rationale information to their DSPD program manager for a review of the documentation of support coordination activities and of the disenrollment recommendation.

- c. If DSPD management staff concurs with the recommendation, a request for disenrollment approval will be forwarded to DMHF for a final decision.
- d. DMHF will review and assure the available array of Medicaid waiver and non-waiver services, and other available resources, have been fully utilized to meet the participant's health and safety needs.
- e. DMHF may facilitate case staffing meetings with appropriate parties, as needed, to complete the review and make an appropriate final decision on the proposed disenrollment.
- f. A DMHF final disenrollment decision will be communicated in writing to both the Support Coordinator and the state-level program management staff.

If the special circumstance disenrollment request is approved by DMHF, the Support Coordinator will provide the participant, or their legal representative when applicable, with the required written notice of action (NOA) and right to fair hearing information.

The Support Coordinator will initiate discharge planning activities sufficient to assure a smooth transition to an alternate Medicaid program and/or to other services. Discharge planning activities shall be documented in the individual's case record.

## 2 - 5 Fair Hearings

- A. An individual and the individual's legal representative will receive a written NOA form 522 and hearing request form 490S, from the waiver support coordinator if the individual is:
  1. Denied a choice of institutional or waiver program,
  2. Found ineligible for the waiver program,
  3. Denied access to the provider of choice for a covered waiver service, or
  4. Experiences a denial, reduction, suspension, or termination in waiver services in accordance with R539-2-5.
- B. The NOA delineates the individual's right to appeal the decision through an informal hearing process at DHS or an administrative hearing process at the Department of Health (DOH), or both. The individual is encouraged to utilize an informal dispute resolution process to expedite equitable solutions.
- C. An aggrieved individual may request a formal hearing within 30 calendar days from the date written notice is issued or mailed, whichever is later. DMHF may reinstate services for participants or suspend any adverse action for providers if the aggrieved person requests a formal hearing not more than ten (10) calendar days after the date of action.
- D. Appeals related to establishing eligibility for state matching funds through DSPD/DHS in accordance with UCA 62A-5 will be addressed through the DHS hearing process. Decisions made through DHS may be



appealed to DOH strictly for procedural review. Appealed decisions demonstrating that DHS followed the fair hearing process will be upheld by DOH as the final decision.

- E. Documentation of notices and the opportunity to request a fair hearing is kept in the individual's case record/file and at DSPD - State Office.
- F. Informal Dispute Resolution
  - 1. DSPD has an informal dispute resolution process. This process is designed to respond to a participant's concerns without unnecessary formality. The dispute resolution process is not intended to limit a participant's access to formal hearing procedures; the participant may file a Request for Hearing any time in the first 30 days after receiving an NOA. Examples of the types of disputes include but are not limited to: concerns with a provider of waiver services, concerns with provider personnel, etc.
  - 2. Attempts to resolve disputes are completed as expeditiously as possible. No specific timelines have been identified as some issues may be resolved very rapidly while other more complex issues may take a greater period of time to resolve.

### **3 PROVIDER PARTICIPATION**

#### **3 - 1 *Provider Enrollment***

- A. Waiver services are covered benefits only when delivered by qualified providers that are enrolled with the SMA to provide the services as part of the Waiver. In addition to this Medicaid provider agreement, all providers of Waiver services must also have a current contract with DHS/DSPD.
- B. The SMA will enter into a provider agreement with all willing providers who are selected by participants and meet licensure, certification, competency requirements and all other provider qualifications.
- C. DHS in conjunction with the Bureau of Contract Management will issue solicitations to possible providers of waiver services through a Request for Proposal (RFP). All solicitations for each RFP are posted through the BidSync.com website. To submit an RFP, a provider must register with BidSync.com and can do so free of charge. RFPs always remain open, allowing for continuous recruitment. A review committee evaluates the proposals against the criteria contained in the RFP and selects those who meet the qualifications.

#### **3 - 2 *Provider Reimbursement***

- A. Providers will be reimbursed according to the specified reimbursement rate(s) contained in the negotiated contract with DSPD.
- B. Providers have the option to allow DHS/DSPD to bill Medicaid on its behalf for covered Medicaid services, or providers have the option to bill Medicaid directly through the Utah MMIS system. Providers may only claim Medicaid reimbursement for services that are authorized on the approved PCSP. Claims must be consistent with the amount, frequency and duration authorized by and documented on the PCSP.

### 3 - 3 Standards of Service

Providers must adhere to service standards and limitations described in this manual, the terms and conditions of the Medicaid provider agreement, the terms and conditions of the Waiver SIP and the terms and conditions contained in the DSPD contract.

### 3 - 4 Data Security & Privacy

Providers are expected to take steps to ensure that all personal information related to the individual being served is protected. This includes both Personal Health Information (PHI) as well as Personally Identifiable Information (PII). Providers should use appropriate administrative, technical and physical safeguards to preserve the integrity, confidentiality, and availability of PHI/PII that they create, receive, maintain or transmit. This includes using encrypted/secure email, fax, or other HIPAA compliant methods to transmit documents containing information about the individual being served. Providers shall ensure there is limited and controlled access to PHI/PII. In the performance of its services and operations, the provider shall make efforts to use, disclose and request only the minimum amount of PHI/PII considered reasonably necessary. The provider shall also identify and protect against reasonably anticipated threats to the security or integrity of the information, protect against reasonably anticipated, impermissible uses or disclosures; and ensure compliance by their workforce.

### 3 - 5 Breach Reporting/Data Loss

Providers must report to DSPD and DMHF, either by email or telephone, any breach or loss of PHI/PII. This report should be completed not more than 24 hours after the provider knows, or should have reasonably known about the breach. The provider must also submit a report in writing/by email to DSPD within 5 business days of the breach. The provider will also cooperate with any investigation of the breach or data loss.

### 3 – 6 Provider Rights to a Fair Hearing

- A. The DOH offers hearing rights to providers who have experienced any adverse action taken by DOH/DMHF, or by the OA. Providers must submit a written request for a hearing to DOH in order to access the hearing process. Please refer to the DOH/DMFH Provider Manual, General Information, Section 1, Chapter 6-15, Administrative Review/Fair Hearing.
- B. Adverse actions that providers may appeal include:
  - 1. Actions relating to enrollment as a Waiver provider,
  - 2. Contract reimbursement rates,
  - 3. Sanctions or other adverse actions related to provider performance, or
  - 4. Improper conduct by DSPD in performing delegated Waiver responsibilities.

### 3- 7 Electronic Visit Verification

Electronic visit verification (EVV) requirements, defined in section 12006 of the 21st Century Cures Act, are effective for Utah Medicaid beginning July 1, 2019. EVV requirements apply to all personal care services and home health care services provided under a 1915 (c) Home and Community Based Waiver.

Choice of reporting systems for EVV are by provider preference, but must meet all federal requirements, including the standards set in the Health Insurance Portability Accountability Act. The State will not implement a mandatory model for use. All provider choice EVV systems must be compliant with requirements of the Cures Act including:

- 1) type of service performed;
- 2) individual receiving the service;
- 3) date of the service;
- 4) location of service delivery;
- 5) individual providing the service;
- 6) time the service begins and ends; and
- 7) the date of creation of the electronic record.

Additional information including technical specifications for file creation/submission and EVV resources can be found at <https://medicaid.utah.gov/evv>

#### 4 SMA PRIOR AUTHORIZATION OF WAIVER SERVICES

- A. Prior authorization by the State Medicaid Agency for Waiver covered services is not required. Provider participation and service delivery will be governed by Waiver quality management systems for assuring proper development and implementation of plans of care, assuring Waiver services are provided by qualified providers, and assuring financial accountability for funds paid to providers for the Waiver program.

#### 5 SUPPORT COORDINATION

##### 5 - 1 Support Coordinator Qualifications

- A. Qualified support coordinators shall possess at least a Bachelors degree in nursing, behavioral science or a human services related field such as social work, sociology, special education, rehabilitation counseling, or psychology and demonstrate competency relating to the planning and delivery of health services to individuals with intellectual disabilities and other related conditions through a successful completion of a training program approved by the State Medicaid Agency. (Please refer to qualifications for a Qualified Intellectual Disabilities Professional (QIDP) as specified in the job specifications contained within: *Interpretive Guidelines for ICF for Persons with Mental Retardation (W159-W180)*; *Code of Federal Regulations, Centers for Medicare and Medicaid Services, State Operations Manual-Appendix J*, pages 77-87.)
- B. An individual with a “Bachelor degree in a human services related field” means an individual who has received: at least a Bachelor degree from a college or university (master and doctorate degrees are also acceptable) and has received academic credit for a minimum of 20 credit hours of coursework

concentration in a human services field, as defined above. Although a variety of degrees may satisfy the requirements, majors such as geology and chemical engineering are not acceptable.

## 5 - 2 Support Coordination and the PCSP

- A. The PCSP is the mechanism through which all necessary Waiver services (as determined during the initial and ongoing comprehensive needs assessment process) are detailed in terms of the amount, frequency and duration of the intervention to be provided to meet identified objectives.
- B. The amount, frequency and duration of each service listed within the PCSP is intended to provide a budget estimate of the services required to meet the assessed needs of each participant over the course of a plan year. Utah Medicaid recognizes that a participant's needs may change periodically due to temporary or permanent conditions which may require changes to the annual PCSP budget.
- C. The support coordinator is responsible to monitor service utilization for each participant under their care. When the support coordinator determines that a participant may require an increase in services, a request for additional services (RAS) must be submitted to DSPD for approval.
- D. The annual PCSP budget is the sum of all approved services within the PCSP including additional services authorized through an approved RAS that are added to the PCSP over the entire plan year. In this way, Utah Medicaid applies an annualized aggregate to the PCSP budget.
- E. Services may not exceed the amount allotted through the annual PCSP budget. Billing in excess of the annual PCSP budget will be subject to a recovery of funds.,

## 5 -3 Support Coordination Encounters

- A. While quarterly face to face visits is the standard, the support coordinator has the discretion to conduct face to face visits with the client more frequently than quarterly. In all cases frequency will be dependent on the assessed needs of the client and will not exceed 90 days without a face to face visit.
- B. Support Coordinators will visit individuals receiving residential supports no less than once every 30 days or at a rate directed by the DSPD program manager. Such visits shall occur in the person's place of residence at least once every 60 days. However, no more than two of these visits during each plan year may occur at other naturally-occurring settings within the participant's community provided that the support being offered to the participant during those visits shall be rendered by staff of the residential care provider.

This approach promotes Support Coordinators having specific information about their expected roles and responsibilities on an individualized waiver participant basis. Program performance reviews assess the accuracy and effectiveness of the link between the determination of need, the PCSP, the implementation of support coordination services and the ongoing evaluation of progress toward the stated objectives.

## 6 SELF-ADMINISTERED SERVICES

- A. Self-Administered Services (SAS) are made available to all waiver enrollees who elect to participate in this method. Under SAS, individuals and/or their chosen representatives hire individual employees to perform

a waiver service/s. The individual and/or their chosen representative are then responsible to perform the functions of supervising, hiring, assuring that employee qualifications are met, scheduling, assuring accuracy of time sheets, etc., of the individual's employee/s. Individuals and/or their chosen representatives may avail themselves of the assistance offered them within the Family Training and Preparation Service should they request and/or be assessed as requiring additional support and assistance in carrying out these responsibilities.

- B. Financial management services are offered in support of the SAS option. A financial management services provider (Fiscal Agent) facilitates the employment of individuals by the Waiver participant or designated representative including: (a) provider qualification verification, (b) employer-related activities including federal, state and local tax withholding/payments, fiscal accounting and expenditure reports and (c) Medicaid claims processing and reimbursement distribution.
- C. The Waiver participant remains the employer of record, retaining control over the hiring, training, management and supervision of employees who provide direct care services.
- D. Under the SAS method, the waiver participant submits their staff time sheet(s) to the Fiscal Agent. The Fiscal Agent pays the claim(s) and submits a bill to DHS/DSPD on Form 520. DHS/DSPD pays the Fiscal Agent then submits the billing claim(s) to DOH for reimbursement. All payments are made through the Fiscal Agent under contract with DSPD. Payments are not issued to the waiver participant, but to and in the name of the employee hired by the person or their representative.

## 7 WAIVER COVERED SERVICES RATE SETTING METHODOLOGY

- A. DHS has entered into an administrative agreement with the DOH/DMHF to set 1915c HCBS waiver rates for waiver covered services. The DHS rate-setting process is designed to comply with requirements under the 1915c HCBS Waiver program and other applicable Medicaid rules. There are four principal methods used in setting the DHS Maximum Allowable Rate (MAR) level. Each method is designed to determine a fair market rate. The four principle methods are:
  - existing market survey or cost survey of current providers
  - component cost analysis
  - comparative analysis
  - community price survey
- B. The Support Coordination covered Waiver service provider rate is calculated using the cost survey of current providers' methodology in general but includes an added procedure in which each fiscal year the SMA establishes specific cost center parameters to be used in calculating the annual MAR.
- C. Annual MAR schedules may be held constant or modified with a Cost of Living Adjustment (COLA) for any or all of the Waiver covered services in lieu of completing one of the four principle methods depending on the budget allocation approved by the Utah State Legislature for the applicable fiscal year.

- D. The SMA will maintain records of changes to the MAR authorized for each Waiver covered service to document the rate setting methodology used to establish the MAR.

**8 SERVICE PROCEDURE CODES**

The procedure codes listed below are covered by Medicaid under the Community Supports Waiver for Individuals with Intellectual Disabilities and Other Related Conditions.

WAIVER SERVICE	CODE	UNIT OF SERVICE
Behavioral consultation service I	H0004	15 minute
Behavioral consultation service II	H0023	15 minute
Behavioral consultation service III	H2019	15 minute
Chore services	S5120	15 minute
Companion services	S5135	15 minute
Companion services - daily	S5136	Per day
Day supports (site/non-site)	T2021	15 minute
Day supports (site/non-site) - daily	T2020	Per day
Environmental accessibility adaptation (home)	S5165	Each
Environmental accessibility adaptation (vehicle)	T2039	Each
Extended living supports	H2021	15 minute
Family training and preparation services	S5110	15 minute
Family and individual training and preparation services	T1027	15 minute
Financial management services	T2040	Per month
Homemaker services	S5130	15 minute
Living start-up costs	T2038	Each
Massage therapy	T2025	15 minute
Personal assistance	S5125	15 minute
Personal assistance - daily	S5126	Daily
Personal budget assistance	H0038	15 minute
Personal budget assistance - daily	H2014	Per day
Personal emergency response systems (install)	S5160	Per episode
Personal emergency response systems (monthly)/Medication Dispenser	S5161	Per month
Personal emergency response systems (purchase)	S5162	Per episode

Professional medication monitoring I (LPN)	H0034	Per episode
Professional medication monitoring II (RN)	H2010	Per episode
Residential habilitation - facility based	T2031	Per day
Residential habilitation - facility based - DCFS	H2016	Per day
Residential habilitation - host home	S5140	Per day
Residential habilitation - professional parent -DCFS	S5145	Per day
Respite care (routine and intensive)	S5150	15 minute
Respite care (routine, intensive, group) - daily	S5151	Per day
Respite care, out of home (intensive/group-R&B included)	H0045	Per day
Respite care, weekly	T2036	Per week
Specialized medical equipment, monthly fee	T2028	Per month
Specialized medical equipment, purchase	T2029	Each
Supported employment, enclave	T2018	Per day
Supported employment, direct & administrative	T2019	15 minute
Supported employment	H2025	15 minute
Supported living	T2017	15 minute
Transportation, non-medical, per mile	S0215	Per mile
Transportation, non-medical, per day	T2002	Per day
Transportation, non-medical, UTA	T2003	Per episode
Transportation, non-medical, bus pass	T2004	Per month
Waiver support coordination	T2022	Per month



## 9 INCIDENT REPORTING PROTOCOL

### I. Purpose:

The State Medicaid Agency (SMA) has the administrative authority over all 1915(c) Medicaid Home and Community Based Services (HCBS) Waivers (Waivers). Waiver programs must provide adequate and appropriate services that safeguard the health and welfare of all enrolled participants. Waiver programs must also assure financial accountability for funds expended for HCBS services. While these responsibilities are delegated to the Operating Agencies (OA), the SMA retains final authority and has the final responsibility to: 1) assure that appropriate actions have taken place when a critical incident or event occurs; and 2) in cases where appropriate safeguards were not in place, that an analysis is conducted and appropriate strategies have been implemented to safeguard participants.

The Critical Incidents and Events Program is a collaborative effort between the OAs for each of the 1915(c) waivers and the SMA. The program has two levels. Level one describes the critical incidents/events that are required to be reported by the OA to the SMA for investigation, resolution and closure. Level two describes the critical incidents/events that are required to be reported to the OA for investigation, resolution and closure.

This Standard Operating Procedure stipulates:

- Level One incidents and events required to be reported to the SMA;
- Level Two incidents and events that are required to be reported to the OA;
- The agency responsible for completing the review; and
- Associated reporting requirements.

### II. Reportable Critical Incidents/Events

#### Level One Incidents and Events – Reportable to the SMA

The following list of the incidents/events (incidents) must be reported by the OA to the SMA. This is not an all-inclusive list. Other incidents that rise to a comparable level must be reported to the SMA.

#### 1. Unexpected Hospitalization

Admission to the hospital for medical treatment related to one or more of the following reasons:

- a. Injuries that result in the loss of physical or mental function  
(*ie; loss of limb, paralysis, brain injury or memory loss*);
- b. Alleged/substantiated abuse or neglect;
- c. Attempted suicide;
- d. Medication errors;
- e. Self-Injurious behavior;
- f. Serious burns; and/or
- g. Substance Abuse.

#### 2. Exploitation (Either Alleged or Substantiated)

Unfairly taking advantage of a participant due to his/her age, health, and/or disability including:

- a. Serious and/or patterned/repeated event(s)- involving a single participant; or
- b. Involving multiple participants.

### 3. Human Rights Violations

- a. Serious infringements of participant human rights (jeopardizing the health and safety of the participant);
- b. *Exceptions:*
  - i. Restrictive/intrusive intervention(s) clearly defined in individualized Behavior Support Plans and/or Care Plan/Person Centered Support Plans pursuant to 42 CFR §441.301(c)(4)(5); and
  - ii. Emergency Behavioral Interventions as defined by Utah Administrative Code, Title R539-4-6.

### 4. Incidents Involving the Media or Referred by Elected Officials

Incidents that have or are anticipated to receive public attention (i.e. events covered in the media or referred by the Governor, legislators or other elected officials).

### 5. Missing Persons

For reporting purposes, the following participants are considered to be missing:

- a. Participants who have been missing for at least twenty-four hours; or
- b. Regardless of the number of hours missing – any participant who is missing under unexplained, involuntary or suspicious circumstances and is believed to be in danger because of age, health, mental or physical disability, environment or weather or who could be in the company of a potentially dangerous person or some other factor that places the participant in peril.

### 6. Unexpected Deaths

All deaths are considered unexpected *with the exception of:*

- a. Participants receiving hospice care; and/or
- b. Deaths due to natural causes, general system failure or terminal/chronic health conditions.

A death related to an adverse event that occurs while the participant is receiving treatment in an in-patient facility, which is regulated by Health Facilities Licensing and Certification, should be reported as an unexpected death, the QA/SMA team may opt not to require an investigation. (*Reportable to Health Facilities Licensing*)

### 7. Waste, Fraud or Abuse of Medicaid Funds

Alleged or confirmed waste, fraud or abuse of Medicaid funds

- a. Perpetrated by the provider; or
- b. Perpetrated by the participant.

### 8. Law Enforcement Involvement

Charges filed against the participant for activities resulting in the:

- a. Hospitalization of another (i.e. aggravated assault);
- b. Death of another; and/or
- c. Abuse and or exploitation of a vulnerable person, due to age, health, and/or disability.

### 9. Private Health Information (PHI)/Personal Identifiable Information (PII) Security Breach

Any activity that could potentially put sensitive information at risk of unauthorized use, access, disclosure, or modification.

#### Procedure for Reporting to the State Medicaid Agency:

- On the first business day after a critical incident has occurred\*, a representative from the OA will notify a member of the SMA Quality Assurance Team via email, telephone or in person. If the OA has any question about whether a case meets the criteria for reporting to the SMA, the OA will contact the SMA for technical assistance.

\* In some cases it will not be possible to report the incident by the next business day after occurrence. In those cases, the incident must be reported the first business day after discovery. The SMA will review cases that are reported after discovery to evaluate whether the case should have been reported after occurrence, and if so, where the breakdown in reporting occurred.

- Within ten business days after notification, the OA will submit a completed Critical Incident Investigation form to the SMA.
- Within five business days after receiving the Critical Incident Investigation form the SMA will review the investigation form submitted by the OA and will contact the OA if additional information or action is required.
- When the SMA determines the investigation is complete, the SMA will document any findings or corrective action requirements on the SMA portion of the investigation form. The SMA will send the OA a copy of the finalized document, closing the case. In some cases, the SMA may continue to monitor findings or corrective actions.
- Within two weeks after closing the case, the SMA will notify the participant or the participant's representative of the investigation results. A copy of the notification letter will be provided to the OA. The following types of incidents are excluded from the notification letter requirement: suicide attempt, missing person, death and investigations that conclude with dis-enrollment and/or are not concluded within six months of the original incident date.

### Level Two Incidents and Events - Reportable to the OA

The following incidents must be reported by providers, participants and/or their representatives to the OA, but are not required to be reported to the SMA. This is not an all-inclusive list. Other incidents that rise to a comparable level must be reported to the OA.

#### 1. Unexpected Medical Treatment (requiring immediate medical treatment at an emergency room)

Medical treatment related to one or more of the following reasons:

- Abuse/Neglect/Exploitation (Either Alleged or Substantiated);
- Medication Errors; and/or
- Substance Abuse.

#### 2. Abuse/Neglect/Exploitation (Either Alleged or Substantiated)

- Exploitation of a participant's funds or property;
- Theft and/or diverting of a participant's medication(s); and/or
- Sexual assault/abuse/exploitation (regardless of medical treatment).

#### 3. Human Rights Violations

Such as:

- Unauthorized use of restrictive interventions- including but not limited to restraints (physical, mechanical or chemical) ;
- Misapplied restrictive interventions, (included in the BSP);
- Unauthorized use of seclusion;
- Unwelcome infringement of personal privacy rights; and/or
- Violations of individual rights to dignity and respect.
- Exceptions:*
  - Restrictive/intrusive intervention(s) clearly defined in individualized Behavior Support Plans and/or Care Plan/Person Centered Support Plans pursuant to 42 CFR §441.301(c)(4)(5); and
  - Emergency Behavioral Interventions as defined by Utah Administrative Code, Title R539-4-6.

*Operating Agencies are responsible to ensure providers are compliant with 42 CFR §441.301(c)(4)(5)*

#### 4. Attempted Suicides

An attempted suicide which **did not** result in the participant being admitted to a hospital. (Suicide attempts do not include suicidal thoughts or threats without actions)

#### 5. Compromised Working or Living Environment

At the Community Supports Waiver working or living environment (e.g. roof collapse, fire, etc.) is compromised and the participant(s) require(s) evacuation.

**6. Law Enforcement Involvement**

- a. Participant(s)
  - i. Criminal charges filed (Not including those reportable to the SMA)
- b. Staff
  - i. Criminal charges filed (*Make report to APS/CPS* (when necessary).
  - ii. When staff is issued a moving violation while transporting participant(s).

*For this category, the date of the incident will be recorded as the date on which the filing of charges occurred.*

**7. Unexpected Hospitalization**

Admission to the hospital for medical treatment related to one or more of the following reasons:

- a. Injuries
- b. Aspiration
- c. Choking

*These do not include medical diagnoses that pose an expected risk for aspiration or choking. Also excluded from this category are self-injurious behavior or injuries resulting in loss of physical or mental function such as a loss of limb, paralysis, brain injury or memory loss experienced by a participant that resulted in **admission to a hospital for medical treatment** (which is reportable to the SMA).*

**Procedure for Reporting to the Operating Agency**

- On the first business day after a critical incident has occurred\*, a representative from the case management or support coordination agency (case manager) will notify the OA via email, telephone or in person.
- Within ten business days after notification, the case manager will submit a completed Critical Incident Investigation form to the OA.
- Within five business days after receiving the Critical Incident Investigation form the OA will review the investigation form submitted by the case manager and will contact the case manager if additional information or action is required.
- When the OA determines the investigation is complete, the OA will document any findings or corrective action requirements on the OA portion of the investigation form. The OA will send the case manager a copy of the finalized document, closing the case. In some cases, the OA may continue to monitor findings or corrective actions.
- Within two weeks after closing the case, the case manager will notify the participant or the participant's representative (in person, phone or in writing) of the investigation results and document notification in the participant's record. The following types of incidents are excluded from the notification requirement: suicide attempt, death, and investigations that conclude with dis-enrollment and/or are not concluded within six months of the original incident date.

\* In some cases it will not be possible to report the incident by the next business day after occurrence. In those cases, the incident must be reported the first business day after discovery. The SMA will review cases that are reported after discovery to evaluate whether the case should have been reported after occurrence, and if so, where the breakdown in reporting occurred.

**III. Required Reports****OA Quarterly Report**

The OA will submit a waiver specific quarterly report to the SMA, no later than one month after the end of the quarter (October 31, January 31, April 30, July 31) that includes:

- name of the participant
- date of the incident
- date the incident was reported to the OA
- category of the incident: incidents such as abuse/neglect/exploitation, law enforcement involvement, medication errors and unexpected hospitalization should be further categorized by type
- brief summary of the incident and its resolution

- date the case was closed
- brief description of any corrective action required of the case manager or other provider

#### OA Annual Report

The OA will submit a waiver specific annual report to the SMA, no later than two months after the end of the fiscal year (August 31) that includes:

- total number of incidents
- number of incidents by category: incidents such as abuse/neglect/exploitation, law enforcement involvement, medication errors and unexpected hospitalization should be further categorized by type
- number of incidents that resulted in corrective action by the case manager or other provider
- number of corrective actions that were implemented
- number of incidents where the participant/representative was informed of the investigation results, and the number of incidents where the contact was made within 14 days of the investigation closure
- summary analysis of whether any systemic trends were noted that may require additional intervention or process improvement steps
  - If trends were noted, the report will include a description of the process improvement steps that will be implemented

#### State Medicaid Agency Annual Report

For incidents that are reportable to the SMA, the SMA will submit an annual report to the State Medicaid Director and OA Division Directors that includes:

- For each waiver:
  - number of incidents
  - number of incidents by category: incidents such as abuse/neglect/exploitation, law enforcement involvement, medication errors and unexpected hospitalization should be further categorized by type
  - number of incidents that resulted in corrective action by the OA, case manager or other provider
  - number of corrective actions that were implemented
- Summary of all waivers:
  - number of incidents
  - number of incidents by category: incidents such as abuse/neglect/exploitation, law enforcement involvement, medication errors and unexpected hospitalization should be further categorized by type
  - number of incidents that resulted in corrective action by the case manager or other provider
  - number of corrective actions that were implemented
  - summary analysis of whether any systemic trends were noted that may require additional intervention or process improvement steps
    - ❖ If trends were noted, the report will include a description of the process improvement steps that will be implemented