

IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE

16.03.10 - MEDICAID ENHANCED PLAN BENEFITS

DOCKET NO. 16-0310-0907

NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Sections 56-202(b), 56-203(g), 56-203(i), and 56-250 through 56-257, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than Wednesday, October 21, 2009.

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

DESCRIPTIVE SUMMARY: The following is a nontechnical explanation of the substance and purpose of the proposed rulemaking:

The Division of Medicaid is proposing to change these rules to allow for the development of a uniform, state-wide consumer-directed services model for all Medicaid programs. This will allow Medicaid's consumer-directed programs to use the same service model. The rule changes proposed in this chapter regarding the removal of references to the fiscal intermediary services under the Home and Community Based Services Waiver for the Aged and Disabled (HCBS A&D) will align with changes being proposed under companion Docket No. 16-0313-0901.

The following is a summary of the proposed changes:

1. The current fiscal intermediary (FI) rules for the HCBS A&D waiver are being removed and replaced with a reference to the self-direction rules found in IDAPA 16.03.13, "Consumer-Directed Services." FI is a service option available under the A&D waiver and allows participant direction of personal care services.
2. References to requirements for providers of FI services (e.g., criminal history and agency training) are being removed. The agency training and criminal history requirements that pertain to personal assistance agencies are being clarified.

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased: NA

FISCAL IMPACT: The following is a specific description, if applicable, of any fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year. NA

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220, Idaho Code, negotiated rulemaking was conducted. The negotiated rulemaking was informal. No notice of Intent to Promulgate Rules was published.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Susan Scheuerer at (208) 287-1156.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before Wednesday, October 28, 2009.

DATED this 2nd day of September, 2009.

Tamara Prisock
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THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 16-0310-0907

011. DEFINITIONS E THROUGH K.

For the purposes of these rules, the following terms are used as defined below: (3-19-07)

01. Educational Services. Services which are provided in buildings, rooms or areas designated or used as a school or as educational facilities; which are provided during the specific hours and time periods in which the educational instruction takes place in the normal school day and period of time for these students; and which are included in the individual educational plan for the participant or required by federal and state educational statutes or regulations; are not related services; and such services are provided to school age individuals as defined in Section 33-201, Idaho Code. (3-19-07)

02. Eligibility Rules. IDAPA 16.03.01, "Eligibility for Health Care Assistance for Families and Children," and IDAPA 16.03.05, "Rules Governing Eligibility for Aid to the Aged, Blind and Disabled (AABD)." (3-19-07)

03. Emergency Medical Condition. A medical condition manifesting itself by acute symptoms of sufficient severity, including severe pain, that a prudent lay person, who possesses an average knowledge of health and medicine, could reasonably expect the absence of immediate medical attention to result in the following: (3-19-07)

a. Placing the health of the individual, or, with respect to a pregnant woman, the health of the woman or unborn child, in serious jeopardy. (3-19-07)

b. Serious impairment to bodily functions. (3-19-07)

c. Serious dysfunction of any bodily organ or part. (3-19-07)

04. Enhanced Plan. The medical assistance benefits included under this chapter of rules. (3-19-07)

05. EPSDT. Early and Periodic Screening Diagnosis and Treatment. (3-19-07)

06. Equity. The net book value of all tangible and intangible assets less the recorded value of all liabilities, as recognized and measured in conformity with generally accepted accounting principles. (3-19-07)

07. Facility. Facility refers to a hospital, nursing facility, or an intermediate care facility for persons with mental retardation. (3-19-07)

a. "Free-standing Nursing Facility" means a nursing facility that is not owned, managed, or operated by, nor is otherwise a part of a licensed hospital. (3-19-07)

b. "Intermediate Care Facility for Persons with Mental Retardation (ICF/MR)" means an entity as defined in Subsection 011.29 in this rule. (3-19-07)

c. "Nursing Facility (NF)" means a facility licensed as a nursing facility and federally certified to provide care to Medicaid and Medicare patients. (3-19-07)

d. "Skilled Nursing Facility" means a nursing facility licensed by the Department to provide twenty-four (24) hour skilled nursing services and federally certified as a "Nursing Facility" under Title XVIII. (3-19-07)

e. "Urban Hospital-Based Nursing Facilities" means hospital-based nursing facilities located within a metropolitan statistical area (MSA) as defined by the United States Bureau of the Census. (3-19-07)

08. Fiscal Intermediary Agency. *An entity that provides services that allow the participant receiving*

personal assistance services, or his designee or legal representative, to choose the level of control he will assume in recruiting, selecting, managing, training, and dismissing his personal assistant regardless of who the employer of record is, and allows the participant control over the manner in which services are delivered. (5-8-09)

- 098. Fiscal Year.** An accounting period that consists of twelve (12) consecutive months. (3-19-07)
- 109. Forced Sale.** A forced sale is a sale required by a bankruptcy, foreclosure, the provisions of a will or estate settlement pursuant to the death of an owner, physical or mental incapacity of an owner which requires ownership transfer to existing partner or partners, or a sale required by the ruling of a federal agency or by a court order. (3-19-07)
- 110. Funded Depreciation.** Amounts deposited or held which represent recognized depreciation. (3-19-07)
- 121. Generally Accepted Accounting Principles (GAAP).** A widely accepted set of rules, conventions, standards, and procedures for reporting financial information as established by the Financial Standards Accounting Board. (3-19-07)
- 132. Goodwill.** The amount paid by the purchaser that exceeds the value of the net tangible assets. The value of goodwill is derived from the economic benefits that a going concern may enjoy, as compared with a new one, from established relations in the related markets, with government departments and other noncommercial bodies and with personal relationships. These intangible assets cannot be separated from the business and sold as can plant and equipment. Under the theory that the excess payment would be made only if expected future earnings justified it, goodwill is often described as the price paid for excess future earnings. The amortization of goodwill is a nonallowable, nonreimbursable expense. (3-19-07)
- 143. Healthy Connections.** The primary care case management model of managed care under Idaho Medicaid. (3-19-07)
- 154. Historical Cost.** The actual cost incurred in acquiring and preparing an asset for use, including feasibility studies, architects' fees, and engineering studies. (3-19-07)
- 165. ICF/MR Living Unit.** The physical structure that an ICF/MR uses to house patients. (3-19-07)
- 176. Improvements.** Improvements to assets which increase their utility or alter their use. (3-19-07)
- 187. Indirect Care Costs.** The following costs either directly coded to the nursing facility or allocated to the nursing facility through the Medicare step-down process described in the PRM: (3-19-07)
- a. Activities; (3-19-07)
 - b. Administrative and general care costs; (3-19-07)
 - c. Central service and supplies; (3-19-07)
 - d. Dietary (non-"raw food" costs); (3-19-07)
 - e. Employee benefits associated with the indirect salaries; (3-19-07)
 - f. Housekeeping; (3-19-07)
 - g. Laundry and linen; (3-19-07)
 - h. Medical records; (3-19-07)
 - i. Other costs not included in direct care costs, or costs exempt from cost limits; and (3-19-07)

- j. Plant operations and maintenance (excluding utilities). (3-19-07)
- 198. Inflation Adjustment.** The cost used in establishing a nursing facility's prospective reimbursement rate is indexed forward from the midpoint of the cost report period to the midpoint of the rate year using the inflation factor plus one percent (+1%) per annum. (3-19-07)
- 209. Inflation Factor.** For use in establishing nursing facility prospective rates, the inflation factor is the Skilled Nursing Facility Market Basket as established by Data Resources, Inc. (DRI), or its successor. If subsequent to the effective date of these rules, Data Resources, Inc., or its successor develops an Idaho-specific nursing facility index, it will be used. The Department is under no obligation to enter into an agreement with DRI or its successor to have an Idaho-specific index established. The national index is used when there is no state or regional index. (3-19-07)
- 210. In-State Care.** Medical services provided within the Idaho border or in counties bordering Idaho are considered to be in-state, excluding long term care. (3-19-07)
- 221. Inspection of Care Team (IOCT).** An interdisciplinary team which provides inspection of care in intermediate care facilities for the mentally retarded approved by the Department as providers of care for eligible medical assistance participants. Such a team is composed of: (3-19-07)
- a. At least one (1) registered nurse; and (3-19-07)
- b. One (1) qualified mental retardation professional; and when required, one (1) of the following: (3-19-07)
- i. A consultant physician; or (3-19-07)
- ii. A consultant social worker; or (3-19-07)
- iii. When appropriate, other health and human services personnel responsible to the Department as employees or consultants. (3-19-07)
- 232. Instrumental Activities of Daily Living (IADL).** Those activities performed in supporting the activities of daily living, including, but not limited, to managing money, preparing meals, shopping, light housekeeping, using the telephone, or getting around in the community. (3-19-07)
- 243. Interest.** The cost incurred for the use of borrowed funds. (3-19-07)
- 254. Interest on Capital Indebtedness.** The cost incurred for borrowing funds used for acquisitions of capital assets, improvements, etc. These costs are reported under property costs. (3-19-07)
- 265. Interest on Working Capital.** The costs incurred for borrowing funds which will be used for "working capital" purposes. These costs are reported under administrative costs. (3-19-07)
- 276. Interest Rate Limitation.** The interest rate allowed for working capital loans and for loans for major movable equipment for ICF/MR facilities is the prime rate as published in the western edition of the Wall Street Journal or successor publication, plus one percent (+1%) at the date the loan is made. (3-19-07)
- 287. Interim Reimbursement Rate (IRR).** A rate paid for each Medicaid patient day which is intended to result in total Medicaid payments approximating the amount paid at audit settlement. The interim reimbursement rate is intended to include any payments allowed in excess of the percentile cap. (3-19-07)
- 298. Intermediary.** Any organization that administers the Title XIX and Title XXI program; in this case the Department of Health and Welfare. (3-19-07)
- 309. Intermediate Care Facility for Persons with Mental Retardation (ICF/MR).** An entity licensed as an ICF/MR and federally certified to provide care to Medicaid and Medicare participants with developmental

disabilities. (3-19-07)

340. Keyman Insurance. Insurance on owners or employees with extraordinary talents in which the direct or indirect beneficiary is the facility or its owners. Premiums related to keyman insurance are not allowable. (3-19-07)

(BREAK IN CONTINUITY OF SECTIONS)

306. PERSONAL ASSISTANCE AGENCY (PAA) - QUALIFICATIONS AND DUTIES.

01. Provider Agreement Required. A Personal Assistance Agency is an organization that has signed the Medicaid Provider General Agreement and the Additional Terms-Personal Assistance Agencies, Aged and Disabled Waiver Provider Agreement with the Department. The PAA agrees to comply with all conditions within the agreements. A Personal Assistance Agency may also provide ~~fiscal intermediary~~ financial management services in accordance with ~~Section 329 of these rules~~ IDAPA 16.03.13, "Consumer-Directed Services." Each Personal Assistance Agency must direct, control, and monitor the work of each of its personal assistants. ~~(5-8-09)~~()

02. Responsibilities of a Personal Assistance Agency. A Personal Assistance Agency must be capable of and is responsible for all of the following, no matter how the PAA is organized or the form of the business entity it has chosen: (3-19-07)

a. Recruitment, hiring, firing, training, supervision, scheduling and payroll for personal assistants and the assurance that all providers are qualified to provide quality service; (3-19-07)

b. Participation in the provision of worker's compensation, unemployment compensation and all other state and federal tax withholdings; (3-19-07)

c. Maintenance of liability insurance coverage. Termination of either worker's compensation or professional liability insurance by the provider is cause for termination of the provider's provider agreement; (3-19-07)

d. Provision of a licensed professional nurse (RN) or, where applicable, a QMRP supervisor to develop and complete plans of care and provide ongoing supervision of a participant's care; (3-19-07)

e. Assignment of qualified personal assistants to eligible participants after consultation with and approval by the participants; (3-19-07)

f. Assuring that all personal assistants meet the qualifications in Subsection 305.01 of these rules; (3-19-07)

g. Billing Medicaid for services approved and authorized by the RMS; (3-19-07)

h. Collecting any participant contribution due; (5-8-09)

i. Conducting, at least annually, participant satisfaction or quality control reviews which are available to the Department and the general public; and (5-8-09)

j. Making referrals for PCS-eligible participants for service coordination as described in Sections 720 through 779 of these rules when a need for the service is identified. (3-19-07)

(BREAK IN CONTINUITY OF SECTIONS)

321. AGED OR DISABLED WAIVER SERVICES - DEFINITIONS.

The following definitions apply to Sections 320 through 330 of these rules: (3-19-07)

01. Uniform Assessment Instrument (UAI). A set of standardized criteria adopted by the Department to assess functional and cognitive abilities. (3-19-07)

02. Individual Service Plan. A document which outlines all services including, but not limited to, personal assistance services and instrumental activities of daily living (IADL), required to maintain the individual in his home and community. The plan is initially developed by the RMS or its contractor for services provided under the Home and Community-Based Services Waiver. This plan must be approved by the RMS and all Medicaid reimbursable services must be contained in the plan. (3-19-07)

03. Personal Assistance Agency or Agency. An entity that recruits, hires, fires, trains, supervises, schedules, oversees quality of work, takes responsibility for the care given, and provides payroll, including all required withholding for federal and state tax purposes, and benefits for care providers working for them. They also bill Medicaid for services provided by employees, and collect participant contribution. (3-19-07)

~~**04. Employer of Record.** An entity which bills for services, withholds required taxes, and conducts other administrative activities for a waiver program participant. Such an entity is also called a personal assistance agency functioning as a fiscal intermediary agency. (5-8-09)~~

~~**05. Employer of Fact.** A participant or representative of a participant who hires, fires, and directs the services delivered by a waiver program provider. This individual may be a family member. (3-19-07)~~

064. Participant. An aged or disabled individual who requires and receives services under the Home and Community-based Waiver program. (3-19-07)

(BREAK IN CONTINUITY OF SECTIONS)

323. AGED OR DISABLED WAIVER SERVICES - PARTICIPANT ELIGIBILITY DETERMINATION.

Waiver eligibility will be determined by the RMS. The participant must be eligible for Medicaid as described in IDAPA 16.03.05, "Rules Governing Eligibility for Aid to the Aged, Blind, and Disabled (AABD)." In addition, waiver participants must meet the following requirements. (3-19-07)

01. Requirements for Determining Participant Eligibility. The RMS must determine that: (3-19-07)

a. The participant would qualify for nursing facility level of care under Sections ~~222 and 223~~ 322 of these rules, if the waiver services listed in Section 326 of these rules were not made available; and ~~(3-19-07)~~ ()

b. The participant could be safely and effectively maintained in the requested or chosen community residence with appropriate waiver services. This determination must be made by the RMS. Prior to any denial of services on this basis, the Department must verify that services to correct the concerns of the team are not available. (3-19-07)

c. The average daily cost of waiver services and other medical services to the participant would not exceed the average daily cost to Medicaid of nursing facility care. (3-19-07)

d. Following the approval by the RMS for services under the waiver, the participant must receive and continue to receive a waiver service as described in these rules. A participant who does not use a waiver service for thirty (30) consecutive days will be terminated from the waiver program. (3-19-07)

02. Admission to a Nursing Facility. A participant who is determined by the RMS to be eligible for services under the waiver may elect to not utilize waiver services and may choose admission to a nursing facility.

(3-19-07)

03. Redetermination Process. Case Redetermination will be conducted by the RMS or its contractor. The redetermination process will verify that the participant continues to meet nursing facility level of care and the participant's continued need for waiver services. (3-19-07)

(BREAK IN CONTINUITY OF SECTIONS)

326. AGED OR DISABLED WAIVER SERVICES - COVERAGE AND LIMITATIONS.

01. Adult Day Care. Adult day care is a supervised, structured day program, outside the home of the participant, that may offer one (1) or more of a variety of social, recreational, health activities, supervision for safety, and assistance with activities of daily living. (3-19-07)

02. Adult Residential Care Services. Services are those that consist of a range of services provided in a congregate setting licensed in accordance with IDAPA 16.03.22, "Residential Care or Assisted Living Facilities in Idaho," that includes: (3-19-07)

- a. Medication management; (3-19-07)
- b. Assistance with activities of daily living; (3-19-07)
- c. Meals, including special diets; (3-19-07)
- d. Housekeeping; (3-19-07)
- e. Laundry; (3-19-07)
- f. Transportation; (3-19-07)
- g. Opportunities for socialization; (3-19-07)
- h. Recreation; and (3-19-07)
- i. Assistance with personal finances. (3-19-07)
- j. Administrative oversight must be provided for all services provided or available in this setting. (3-19-07)

k. A written individual service plan must be negotiated between the participant or his legal representative, and a facility representative. (3-19-07)

03. Assistive Technology. Assistive technology is any item, piece of equipment, or product system beyond the scope of the Medicaid State Plan, whether acquired off the shelf or customized, that is used to increase, maintain, or improve the functional capability of the participant. Assistive technology also includes items necessary for life support, ancillary supplies and equipment necessary to the proper functioning of such items, and durable and non-durable medical equipment. (3-19-07)

04. Assisted Transportation. Individual assistance with non-medical transportation services, including escort to a person who has difficulties (physical or cognitive) using regular vehicular transportation. Such services are specified in the plan for services in order to enable waiver participants to gain access to waiver and other community services and resources. (3-19-07)

- a. Assisted transportation service is offered in addition to medical transportation required in IDAPA

16.03.09, "Medicaid Basic Plan Benefits," Sections 860 through 876, and will not replace it. (3-19-07)

b. Whenever possible, family, neighbors, friends, or community agencies who can provide this service without charge or public transit providers will be utilized. (3-19-07)

05. Attendant Care. ()

a. Attendant care services are those services that involve personal and medically oriented tasks dealing with the functional needs of the participant. These services may include personal care and medical tasks that can be done by unlicensed persons, or delegated to an unlicensed person by a licensed health care professional. Services may occur in the participant's home, community, work, or school, or in recreational settings. ~~(3-30-07)~~()

~~**a.** To utilize the services of a Personal Assistance Agency acting as a fiscal intermediary, the participant family, or legal representative must be able and willing to assume responsibility for the direction of the participant's care and for personnel activities such as provider selection and supervision. If the participant, family, or legal representative is unable or unwilling to assume such responsibility, then an agency employee must be utilized. (3-19-07)~~

b. The Department may require supervision by a health care professional if the required care is so complex that such supervision is necessary for health and safety. (3-19-07)

06. Chore Services. Chore services include the services provided in Subsection 326.06.a. and 326.06.b. of this rule: (3-19-07)

a. Intermittent Assistance may include the following. (3-19-07)

i. Yard maintenance; (3-19-07)

ii. Minor home repair; (3-19-07)

iii. Heavy housework; (3-19-07)

iv. Sidewalk maintenance; and (3-19-07)

v. Trash removal to assist the participant to remain in their home. (3-19-07)

b. Chore activities may include the following: (3-19-07)

i. Washing windows; (3-19-07)

ii. Moving heavy furniture; (3-19-07)

iii. Shoveling snow to provide safe access inside and outside the home; (3-19-07)

iv. Chopping wood when wood is the participant's primary source of heat; and (3-19-07)

v. Tacking down loose rugs and flooring. (3-19-07)

c. These services are only available when neither the participant, nor anyone else in the household is capable of performing or financially providing for them, and where no other relative, caretaker, landlord, community volunteer, agency, or third party payer is willing to or is responsible for their provision. (3-19-07)

d. In the case of rental property, the responsibility of the landlord, pursuant to the lease agreement, will be examined prior to any authorization of service. Chore services are limited to the services provided in a home rented or owned by the participant. (3-19-07)

07. Adult Companion. In-home services to insure the safety and well-being of a person who cannot be

left alone because of frail health, a tendency to wander, inability to respond to emergency situations, or other conditions that would require a person on-site. The service provider may provide voice cuing and occasional assistance with toileting, personal hygiene, dressing, and other activities of daily living. However, the major responsibility is to provide companionship and be there in case they are needed. (3-19-07)

08. Consultation. Consultation services are services to a participant or family member. Services provided by a PAA to a participant or family member to increase their skills as an employer or manager of their own care. Such services are directed at achieving the highest level of independence and self reliance possible for the participant/family. Services to the provider are for the purpose of understanding the special needs of the participant and the role of the care giver. (3-19-07)

09. Home Delivered Meals. Meals which are designed to promote adequate participant nutrition through the provision and home delivery of one (1) to two (2) meals per day. Home delivered meals are limited to participants who: (3-19-07)

- a. Rent or own their own home; (3-19-07)
- b. Are alone for significant parts of the day; (3-19-07)
- c. Have no regular caretaker for extended periods of time; and (3-19-07)
- d. Are unable to prepare a balanced meal. (3-19-07)

10. Homemaker Services. Assistance to the participant with light housekeeping, laundry, assistance with essential errands, meal preparation, and other light housekeeping duties if there is no one else in the household capable of performing these tasks. (3-19-07)

11. Home Modifications. Minor housing adaptations that are necessary to enable the participant to function with greater independence in the home, or without which, the participant would require institutionalization. Such adaptations may include: (3-19-07)

a. The installation of ramps and lifts, widening of doorways, modification of bathroom facilities, or installation of electric and plumbing systems which are necessary to accommodate the medical equipment and supplies necessary for the welfare of the waiver participant, but will exclude those adaptations or improvements to the home which are not of direct medical or remedial benefit to the participant, such as carpeting, roof repair, or central air conditioning. (3-19-07)

b. Permanent environmental modifications are limited to modifications to a home owned by the participant or the participant's family and the home is the participant's principal residence. (3-19-07)

c. Portable or Non-Stationary Modifications. Portable or non-stationary modifications may be made when such modifications can follow the participant to his next place of residence or be returned to the Department. (3-19-07)

12. Personal Emergency Response System. A system which may be provided to monitor waiver participant safety or provide access to emergency crisis intervention for emotional, medical, or environmental emergencies through the provision of communication connection systems. PERS are limited to participants who: (3-19-07)

- a. Rent or own their home, or live with unpaid relatives; (3-19-07)
- b. Are alone for significant parts of the day; (3-19-07)
- c. Have no caretaker for extended periods of time; and (3-19-07)
- d. Would otherwise require extensive routine supervision. (3-19-07)

13. Psychiatric Consultation. Psychiatric Consultation is direct consultation and clinical evaluation of participants, who are currently experiencing or may be expected to experience a psychological, behavioral, or emotional crisis. This service may provide training to the direct service provider or participant's family related to the needs of a participant. These services also provide emergency intervention involving the direct support of the participant in crisis. (3-19-07)

14. Respite Care. Occasional breaks from care giving responsibilities to non-paid care givers. The care giver or participant is responsible for selecting, training, and directing the provider. While receiving respite care services, the waiver participant cannot receive other waiver services which are duplicative in nature. Respite care services provided under this waiver will not include room and board payments. (3-19-07)

15. Service Coordination. Service coordination includes all of the activities contained in Section 727 of these rules. Such services are designed to foster independence of the participant, and will be time limited. (3-19-07)

a. All services will be provided in accordance with an individual service plan. All services will be incorporated into the Individual Service plan and authorized by the RMS. (3-19-07)

b. The service coordinator must notify the RMS, the Personal Assistance Agency, as well as the medical professionals involved with the participant of any significant change in the participant's situation or condition. (3-19-07)

16. Skilled Nursing Services. Intermittent or continuous oversight, training, or skilled care which is within the scope of the Nurse Practice Act and as such care must be provided by a licensed registered nurse, or licensed practical nurse under the supervision of a registered nurse, licensed to practice in Idaho. These services are not appropriate if they are less cost effective than a Home Health visit. Nursing services may include but are not limited to: (3-19-07)

a. The insertion and maintenance of nasogastric tubes and the monitoring or installation of feeding material; (3-19-07)

b. The maintenance of volume ventilators including associated tracheotomy care, tracheotomy, and oral pharyngeal suctioning. (3-19-07)

c. Maintenance and monitoring of IV fluids or nutritional supplements which are to be administered on a continuous or daily basis; (3-19-07)

d. Injections; (3-19-07)

e. Blood glucose monitoring; and (3-19-07)

f. Blood pressure monitoring. (3-19-07)

17. Habilitation. Habilitation services consist of an integrated array of individually-tailored services and supports furnished to eligible participants. These services and supports are designed to assist the participants to reside successfully in their own homes, with their families, or in alternate family homes. (3-30-07)

a. Residential habilitation services assist the individual to acquire, retain, or improve his ability to reside as independently as possible in the community or maintain family unity. Habilitation services include training in one (1) or more of the following areas: (3-30-07)

i. Self-direction consists of identifying and responding to dangerous or threatening situations, making decisions and choices affecting the individual's life, and initiating changes in living arrangements or life activities; (3-30-07)

ii. Money management consists of training or assistance in handling personal finances, making purchases, and meeting personal financial obligations; (3-30-07)

iii. Daily living skills consist of training in accomplishing routine housekeeping tasks, meal preparation, dressing, personal hygiene, self administration of medications, and other areas of daily living including proper use of adaptive and assistive devices, appliances, as well as following home safety, first aid, and emergency procedures; (3-30-07)

iv. Socialization consists of training or assistance in participation in general community activities and establishing relationships with peers with an emphasis on connecting the participant to his community. Socialization training associated with participation in community activities includes assisting the participant to identify activities of interest, working out arrangements to participate in such activities, and identifying specific training activities necessary to assist the participant to continue to participate in such activities on an on-going basis. Socialization training does not include participation in nontherapeutic activities that are merely diversional or recreational in nature; (3-30-07)

v. Mobility consists of training or assistance aimed at enhancing movement within the person's living arrangement, mastering the use of adaptive aids and equipment, accessing and using public transportation, independent travel, or movement within the community; or (3-30-07)

vi. Behavior shaping and management consist of training and assistance in appropriate expressions of emotions or desires, assertiveness, acquisition of socially appropriate behaviors, or extension of therapeutic services that consist of reinforcing physical, occupational, speech, and other therapeutic programs. (3-30-07)

b. Day rehabilitation consists of assistance with acquisition, retention, or improvement in self-help, socialization, and adaptive skills that take place in a non-residential setting, separate from the home or facility in which the participant resides. Services will normally be furnished four (4) or more hours per day on a regularly scheduled basis, for one (1) or more days per week, unless provided as an adjunct to other day activities included in a participant's plan of care. Day rehabilitation services will focus on enabling the participant to attain or maintain his or her maximum functional level and will be coordinated with any physical therapy, occupational therapy, or speech-language pathology services listed in the plan of care. In addition, day rehabilitation services may serve to reinforce skills or lessons taught in school, therapy, or other settings. (4-2-08)

18. Supported Employment. Supported employment consists of competitive work in integrated work settings for individuals with the most severe disabilities for whom competitive employment has not traditionally occurred, or for whom competitive employment has been interrupted or intermittent as a result of a severe disability. Because of the nature and severity of their disability, these individuals need intensive supported employment services or extended services in order to perform such work. (3-30-07)

a. Supported employment services rendered under this waiver are not available under a program funded by either the Rehabilitation Act of 1973, as amended, or the Individuals with Disabilities Education Act (IDEA). Documentation must be maintained by RMS in the file of each individual receiving this service verifying that the service is not otherwise available or funded under the Rehabilitation Act of 1973, as amended, or the IDEA. (3-30-07)

b. Federal Financial Participation (FFP) can not be claimed for incentive payments, subsidies, or unrelated vocational training expenses such as the following: incentive payments made to an employer of waiver participants to encourage or subsidize the employer's participation in a supported employment programs, payments that are passed through to beneficiaries of supported employment programs, or payments for vocational training that is not directly related to a waiver participant's supported employment program. (3-30-07)

19. Behavior Consultation or Crisis Management. Behavior consultation or crisis management consists of services that provide direct consultation and clinical evaluation of participants who are currently experiencing, or are expected to experience, a psychological, behavioral, or emotional crisis. This service may provide training and staff development related to the needs of a participant. These services also include emergency back-up that provides direct support and services to a participant in crisis. (3-30-07)

(BREAK IN CONTINUITY OF SECTIONS)

328. AGED OR DISABLED WAIVER SERVICES - PROCEDURAL REQUIREMENTS.

01. Role of the Regional Medicaid Services. The RMS will provide for the administration of the UAI, and the development of the initial individual service plan. This will be done either by RMS staff or a contractor. The RMS will review and approve all individual service plans, and will authorize Medicaid payment by type, scope, and amount. (3-30-07)

a. Services which are not in the individual service plan approved by the RMS are not eligible for Medicaid payment. (3-19-07)

b. Services in excess of those in the approved individual service plan are not eligible for Medicaid payment. (3-19-07)

c. The earliest date that services may be approved by the RMS for Medicaid payment is the date that the participant's individual service plan is signed by the participant or his designee. (3-19-07)

02. Pre-Authorization Requirements. All waiver services must be pre-authorized by the Department. Authorization will be based on the information from: (3-19-07)

a. The UAI; (3-19-07)

b. The individual service plan developed by the Department or its contractor; and (3-19-07)

c. Any other medical information which verifies the need for nursing facility services in the absence of the waiver services. (3-19-07)

03. UAI Administration. The UAI will be administered, and the initial individual service plan developed, by the RMS or its contractor. (3-19-07)

04. Individual Service Plan. All waiver services must be authorized by the RMS in the Region where the participant will be residing and services provided based on a written individual service plan. (3-30-07)

a. The initial individual service plan is developed by the RMS or its contractor, based on the UAI, in conjunction with: (3-19-07)

i. The waiver participant (with efforts made by the RMS to maximize the participant's involvement in the planning process by providing him with information and education regarding his rights); (3-30-07)

ii. The guardian, when appropriate; (3-30-07)

iii. The supervising nurse or case manager, when appropriate; and (3-19-07)

iv. Others identified by the waiver participant. (3-19-07)

b. The individual service plan must include the following: (3-19-07)

i. The specific type, amount, frequency, and duration of Medicaid reimbursed waiver services to be provided; (3-30-07)

ii. Supports and service needs that are to be met by the participant's family, friends, neighbors, volunteers, church, and other community services; (3-30-07)

iii. The providers of waiver services when known; (3-30-07)

iv. Documentation that the participant has been given a choice between waiver services and institutional placement; and (3-19-07)

- v. The signature of the participant or his legal representative, agreeing to the plan. (3-19-07)
- c. The individual service plan must be revised and updated at least annually, based upon treatment results or a change in the participant's needs. (3-19-07)
- d. All services reimbursed under the Aged or Disabled Waiver must be authorized by the RMS prior to the payment of services. (3-19-07)
- e. The individual service plan, which includes all waiver services, is monitored by the Personal Assistance Agency, participant, family, and the RMS or its contractor. (3-19-07)
- 05. Service Delivered Following a Written Plan of Care.** All services that are provided must be based on a written plan of care. (3-30-07)
- a. The plan of care is developed by the plan of care team which includes: (3-30-07)
- i. The waiver participant with efforts made to maximize his participation on the team by providing him with information and education regarding his rights; (3-30-07)
- ii. The Department's administrative case manager; (3-30-07)
- iii. The guardian when appropriate; (3-30-07)
- iv. Service provider identified by the participant or guardian; and (3-30-07)
- v. May include others identified by the waiver participant. (3-30-07)
- b. The plan of care must be based on an assessment process approved by the Department. (3-30-07)
- c. The plan of care must include the following: (3-30-07)
- i. The specific types, amounts, frequency and duration of Medicaid reimbursed waiver services to be provided; (3-30-07)
- ii. Supports and service needs that are to be met by the participant's family, friends and other community services; (3-30-07)
- iii. The providers of waiver services; (3-30-07)
- iv. Goals to be addressed within the plan year; (3-30-07)
- v. Activities to promote progress, maintain functional skills, or delay or prevent regression; and (3-30-07)
- vi. The signature of the participant or his legal representative. (3-30-07)
- d. The plan must be revised and updated by the plan of care team based upon treatment results or a change in the participant's needs. A new plan must be developed and approved annually. (3-30-07)
- e. The Department's case manager monitors the plan of care and all waiver services. (3-30-07)
- f. The plan of care may be adjusted during the year with an addendum to the plan. These adjustments must be based on changes in a participant's need or demonstrated outcomes. Additional assessments or information may be clinically necessary. Adjustment of the plan of care is subject to prior authorization by the Department. (3-30-07)

- 06. Provider Records.** Records will be maintained on each waiver participant. (3-19-07)
- a.** Each service provider must document each visit made or service provided to the participant, and will record at a minimum the following information: (3-19-07)
- i.** Date and time of visit; (3-19-07)
- ii.** Services provided during the visit; (3-19-07)
- iii.** Provider observation of the participant's response to the service, if appropriate to the service provided, including any changes in the participant's condition; and (3-19-07)
- iv.** Length of visit, including time in and time out, if appropriate to the service provided. Unless the RMS or its contractor determines that the participant is unable to do so, the service delivery will be verified by the participant as evidenced by their signature on the service record. (3-19-07)
- b.** The provider is required to keep the original service delivery record. A copy of the service delivery record will be maintained in the participant's living arrangement unless authorized to be kept elsewhere by the RMS. Failure to maintain documentation according to these rules will result in the recoupment of funds paid for undocumented services. (3-19-07)
- c.** The individual service plan initiated by the RMS or its contractor must specify which waiver services are required by the participant. The plan will contain all elements required by Subsection 328.04.a of these rules and a copy of the most current individual service plan will be maintained in the participant's home and will be available to all service providers and the Department. A copy of the current individual service plan and UAI will be available from the RMS to each individual service provider with a release of information signed by the participant or legal representative. (3-19-07)

07. Provider Responsibility for Notification. The service provider is responsible to notify the RMS, physician or authorized provider, or case manager, and family if applicable, when any significant changes in the participant's condition are noted during service delivery. Such notification will be documented in the service record. (3-19-07)

08. Records Retention. Personal Assistance Agencies, and other providers are responsible to retain their records for five (5) years following the date of service. (3-19-07)

~~**09. Requirements for an Fiscal Intermediary (FI).** Participants of PCS will have one (1) year from the date which services begin in their geographic region to obtain the services of an FI and become an employee in fact or to use the services of an agency. Provider qualifications are in accordance with Section 329 of these rules. (3-19-07)~~

329. AGED OR DISABLED WAIVER SERVICES - PROVIDER QUALIFICATIONS AND DUTIES. Each provider must have a signed provider agreement with the Department for each of the services it provides. (3-19-07)

~~**01. Employment Status.** Unless otherwise specified by the Department, each individual service provider must be an employee of record or fact of an agency. The Department may enter into provider agreements with individuals in situations in which no agency exists, or no fiscal intermediary agency is willing to provide services. Such agreements will be reviewed annually to verify whether coverage by a personal assistance agency or fiscal intermediary agency is still not available. (5-8-09)~~

~~**021. Fiscal Intermediary Services.** An agency that has responsibility for the following: **Financial Management Co-Employer** The definition, criminal history requirements, provider responsibilities, and provider requirements for a financial management co-employer are found in IDAPA 16.03.13, "Consumer-Directed Services." (5-8-09)()~~

~~**a.** To directly assure compliance with legal requirements related to employment of waiver service~~

- ~~providers;~~ (3-19-07)
- ~~b. To offer supportive services to enable participants or families consumers to perform the required employer tasks themselves;~~ (3-19-07)
- ~~c. To bill the Medicaid program for services approved and authorized by the Department;~~ (3-19-07)
- ~~d. To collect any participant participation due;~~ (3-19-07)
- ~~e. To pay personal assistants and other waiver service providers for service;~~ (3-19-07)
- ~~f. To perform all necessary withholding as required by state and federal labor and tax laws, rules and regulations;~~ (3-19-07)
- ~~g. To assure that personal assistants providing services meet the standards and qualifications under in this rule;~~ (5-8-09)
- ~~h. To maintain liability insurance coverage;~~ (5-8-09)
- ~~i. To conduct, at least annually, participant satisfaction or quality control reviews that are available to the Department and the general public;~~ (5-8-09)
- ~~j. To make referrals for service coordination for a PCS eligible participant when a need for such services is identified; and~~ (5-8-09)
- ~~k. To obtain such criminal background checks and health screens on new and existing employees of record and fact as required.~~ (5-8-09)

032. Provider Qualifications. All personal assistance providers of homemaker, respite care, adult day health, transportation, chore companion, attendant adult residential care, home delivered meals, and behavior consultants must meet, either by formal training or demonstrated competency, the training requirements contained in the provider training matrix and the standards for direct care staff and allowable tasks or activities in the Department's approved Aged and Disabled waiver as approved by CMS. (3-19-07)(____)

- a.** A waiver provider can not be a relative of any participant to whom the provider is supplying services. (3-19-07)
- b.** For the purposes of ~~Section 329 of these~~ this rules, a relative is defined as a spouse or parent of a minor child. (3-19-07)(____)
- c.** Individuals who provide direct care or services must satisfactorily complete a criminal history and background check in accordance with IDAPA 16.05.06, "Criminal History and Background Checks," including: (4-2-08)
- i.** Companion services; (4-2-08)
 - ii.** Chore services; and (4-2-08)
 - iii.** Respite care services. (4-2-08)

043. Specialized Medical Equipment Provider Qualifications. Providers of specialized medical equipment and supplies must be enrolled in the Medicaid program as participating medical vendor providers. (3-19-07)

054. Nursing Service Provider Qualifications. Nursing Service Providers must be licensed as an R.N. or L.P.N. in Idaho or be practicing on a federal reservation and be licensed in another state. (3-19-07)

- 065. Psychiatric Consultation Provider Qualifications.** Psychiatric Consultation Providers must have: (3-19-07)
- a.** A master's degree in a behavioral science; (3-19-07)
 - b.** Be licensed in accordance with state law and regulations; or (3-19-07)
 - c.** A bachelor's degree and work for an agency with direct supervision from a licensed or Ph.D. psychologist and have one (1) year's experience in treating severe behavior problems. (4-2-08)
 - d.** Psychiatric consultation providers who provide direct care or services must satisfactorily complete a criminal history and background check in accordance with IDAPA 16.05.06, "Criminal History and Background Checks." (4-2-08)
- 076. Service Coordination.** Service coordinators and service coordination agencies must meet the requirements specified in Section 729 of these rules unless specifically modified by another section of these rules. (3-19-07)
- 087. Consultation Services.** Services must be provided through a Personal Assistance Agency by a person who has demonstrated skills in training participants/family members in hiring, firing, training, and supervising their own care providers. (3-19-07)
- 098. Adult Residential Care Providers.** Adult Residential Care providers will meet all applicable state laws and regulations. In addition, the provider must ensure that adequate staff are provided to meet the needs of the participants accepted for admission. Adult residential care providers who provide direct care or services must satisfactorily complete a criminal history and background check in accordance with IDAPA 16.03.19, "Rules Governing Certified Family Homes," and IDAPA 16.03.22, "Residential Care or Assisted Living Facilities in Idaho." (4-2-08)
- 109. Home Delivered Meals.** Providers must be a public agency or private business and must be capable of: (3-19-07)
- a.** Supervising the direct service; (3-19-07)
 - b.** Providing assurance that each meal meets one-third (1/3) of the recommended daily allowance, as defined by the Food and Nutrition Board of the National Research Council of the National Academy of Sciences; (3-19-07)
 - c.** Delivering the meals in accordance with the plan for care, in a sanitary manner and at the correct temperature for the specific type of food; (3-19-07)
 - d.** Maintaining documentation that the meals served are made from the highest USDA grade for each specific food served; and (3-19-07)
 - e.** Being inspected and licensed as a food establishment by the district health department. (3-19-07)
- 110. Personal Emergency Response Systems.** Providers must demonstrate that the devices installed in waiver participant's homes meet Federal Communications Standards, Underwriter's Laboratory Standards, or equivalent standards. (3-19-07)
- 121. Adult Day Care.** Facilities that provide adult day care must be maintained in safe and sanitary manner. (3-30-07)
- a.** Facilities will provide the necessary space and staff to meet the needs of the participants accepted by the provider. Supervision must be provided by the facility as necessary, to assure the safety and comfort of participants served. (3-19-07)

b. Providers who accept participants into their homes for services must maintain the homes in a safe and sanitary manner. Supervision must be provided by the provider as necessary to assure the safety and comfort of participants served. (3-30-07)

c. Adult day care providers who provide direct care or services must satisfactorily complete a criminal history and background check in accordance with IDAPA 16.05.06, "Criminal History and Background Checks." (4-2-08)

132. **Assistive Technology.** All items must meet applicable standards of manufacture, design and installation. The equipment must be the most cost effective to meet the participant's need. (3-19-07)

143. **Assisted Transportation Services.** See Subsection 329.032 of this rule for provider qualifications. (~~3-19-07~~)(____)

154. **Attendant Care.** See Subsection 329.032 of this rule for provider qualifications. Attendant care providers who provide direct care and services must satisfactorily complete a criminal history and background check in accordance with IDAPA 16.05.06, "Criminal History and Background Checks." (~~4-2-08~~)(____)

165. **Homemaker Services.** The homemaker must be an employee of record or fact of an agency. Homemaker service providers who provide direct care or services must satisfactorily complete a criminal history and background check in accordance with IDAPA 16.05.06, "Criminal History and Background Checks." (4-2-08)

176. **Home Modifications.** All services must be provided in accordance with applicable state or local building codes and meet state or local building, plumbing, and electrical requirements for certification. (3-19-07)

187. **Residential Habilitation Provider Qualifications.** Residential habilitation services must be provided by an agency that is capable of supervising the direct services provided. Individuals who provide residential habilitation services in their own home must be certified by the Department as a certified family home and must be affiliated with a residential habilitation agency. The residential habilitation agency provides oversight, training, and quality assurance to the certified family home provider. Individuals who provide residential habilitation services in the home of the participant (supported living), must be employed by a residential habilitation agency. Providers of residential habilitation services must meet the following requirements: (3-30-07)

- a.** Direct service staff must meet the following minimum qualifications: (3-30-07)
 - i.** Be at least eighteen (18) years of age; (3-30-07)
 - ii.** Be a high school graduate or have a GED or demonstrate the ability to provide services according to a plan of care; (3-30-07)
 - iii.** Have current CPR and First Aid certifications; (3-30-07)
 - iv.** Be free from communicable diseases; (3-30-07)
 - v.** Each staff person assisting with participant medications must successfully complete and follow the "Assistance with Medications" course available through the Idaho Professional Technical Education Program approved by the Idaho State Board of Nursing or other Department-approved training. (3-30-07)
 - vi.** Residential habilitation providers who provide direct care or services must satisfactorily complete a criminal history and background check in accordance with IDAPA 16.05.06, "Criminal History and Background Checks;" (4-2-08)
 - vii.** Have appropriate certification or licensure if required to perform tasks which require certification or licensure. Direct service staff must also have taken a traumatic brain injury training course approved by the Department. (3-30-07)
- b.** The provider agency is responsible for providing direct service staff with a traumatic brain injury

training course approved by the Department, and training specific to the needs of the participant. Skill training may be provided by a Program Coordinator who has demonstrated experience in writing skill training programs, if no agency is available in their geographic area as outlined in Subsection 329.187.c. of this rule. ~~(3-30-07)~~(____)

c. Residential habilitation providers who are unable to be employed by an agency because one is not available in their geographic area, must receive program development, implementation and oversight of service delivery services by a program coordinator who has a valid service coordination provider agreement with the Department and who has taken a traumatic brain injury training course approved by the Department. (3-30-07)

d. Prior to delivering services to a participant, direct service staff must complete an orientation program. The orientation program must include the following subjects: (3-30-07)

- i. Purpose and philosophy of services; (3-30-07)
- ii. Service rules; (3-30-07)
- iii. Policies and procedures; (3-30-07)
- iv. Proper conduct in relating to waiver participants; (3-30-07)
- v. Handling of confidential and emergency situations that involve the waiver participant; (3-30-07)
- vi. Participant rights; (3-30-07)
- vii. Methods of supervising participants; (3-30-07)
- viii. Working with individuals with traumatic brain injuries; and (3-30-07)
- ix. Training specific to the needs of the participant. (3-30-07)

e. Additional training requirements must be completed within six (6) months of employment or affiliation with the residential habilitation agency and include at a minimum: (3-30-07)

- i. Instructional techniques: Methodologies for training in a systematic and effective manner; (3-30-07)
- ii. Managing behaviors: Techniques and strategies for teaching adaptive behaviors; (3-30-07)
- iii. Feeding; (3-30-07)
- iv. Communication; (3-30-07)
- v. Mobility; (3-30-07)
- vi. Activities of daily living; (3-30-07)
- vii. Body mechanics and lifting techniques; (3-30-07)
- viii. Housekeeping techniques; and (3-30-07)
- ix. Maintenance of a clean, safe, and healthy environment. (3-30-07)

f. The provider agency will be responsible for providing on-going training specific to the needs of the participant as needed; and (3-30-07)

g. When residential habilitation services are provided in the provider's home, the provider must meet the requirements in IDAPA 16.03.19, "Rules Governing Certified Family Homes." Non-compliance with the

certification process is cause for termination of the provider agreement or contract. (3-30-07)

198. Day Rehabilitation Provider Qualifications. Providers of day rehabilitation services must have a minimum of two (2) years of experience working directly with persons with a traumatic brain injury, must provide documentation of standard licensing specific to their discipline, and must have taken a traumatic brain injury course approved by the Department. Day rehabilitation providers who provide direct care and services must satisfactorily complete a criminal history and background check in accordance with IDAPA 16.05.06, "Criminal History and Background Checks." (4-2-08)

201. Supported Employment Service Providers. Supported employment services must be provided by an agency capable of supervising the direct service and be accredited by the Commission on Accreditation of Rehabilitation Facilities; or other comparable standards; or meet State requirements to be a State-approved provider, and have taken a traumatic brain injury training course approved by the Department. Supported employment service providers who provide direct care or services must satisfactorily complete a criminal history and background check in accordance with IDAPA 16.05.06, "Criminal History and Background Checks." (4-2-08)

210. Behavior Consultation or Crisis Management Service Providers. Behavior consultation or crisis management providers must meet the following: (3-30-07)

a. Have a Master's Degree in a behavioral science such as social work, psychology, psychosocial rehabilitation counseling, psychiatric nursing, or a closely related course of study; (3-30-07)

b. Be a licensed pharmacist; or (3-30-07)

c. Work for a provider agency capable of supervising the direct service or work under the direct supervision of a licensed psychologist or Ph.D., with training and experience in treating severe behavior problems and training and experience in applied behavior analysis; and (3-30-07)

d. Take a traumatic brain injury training course approved by the Department. (3-30-07)

e. Emergency back-up providers must also meet the minimum provider qualifications under residential habilitation services. (3-30-07)

f. Behavior consultation or crisis management service providers who provide direct care or services must satisfactorily complete a criminal history and background check in accordance with IDAPA 16.05.06, "Criminal History and Background Checks." (4-2-08)