DEVELOPMENTAL DISABILITIES TRADITIONAL WAIVER REVIEW

Proposed Amendment for waiver dated 04/01/2019

NORTH Dakota | Human Services

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KEY CONCEPTS REGARDING THE WAIVER

What is a waiver?

- Section 1915 c of the Social Security Act was changed to allow states to ask for waivers.
- A waiver means that the regular rules are "waived"—that is regular rules are not applied.
- The Home and Community Based (HCBS) waiver began in 1981 as a means to correct the "institutional bias" of Medicaid funding. North Dakota began utilizing the waiver in 1982.
- The "bias" is that individuals could get support services while institutionalized, but if they wanted to remain or live in the community, they could not get similar services.
- The idea is that states can use the Medicaid money for community services that would have been used if the person went to an institution.
  - ***This is why getting HCBS waiver services is tied to institutional eligibility.***
- This does not mean that you have to go to an institution or want to go to an institution ----just that you could be eligible for services in an institution.

KEY CONCEPTS REGARDING THE WAIVER

Benefits of a Waiver:

- People can choose services in the community where they can live with family and friends.
- The state can decide:
  - The values that underlie our system
  - What supports and services are covered and
  - Who can provide those services
- Medicaid is a matching program where the STATE pays part of the cost (based on a formula) and the FEDERAL government “matches” what the state pays.
- This is important because the availability of STATE money drives how many people the waiver can serve and how much a state spends.
- The waiver must operate based on the spending/budget that is designated by the Legislature.

KEY CONCEPTS REGARDING THE WAIVER

Waiver application:

- Back in the good old days there was no waiver application, just a set of statutes.
- In 1990 CMS published a waiver template/application that was about 24 pages.
- In 1995 a new version was published that was about 35 pages.
- After the General Accounting Office completed a review of HCBS waivers and severely criticized CMS (formerly HCFA) for their oversight of the waivers, a new template/application was published.
- We now have a 324 page technical assistance guide to use when filling out the CMS application which is about 100 pages when blank with 10 appendices.

KEY CONCEPTS REGARDING THE WAIVER

Waiver approval process

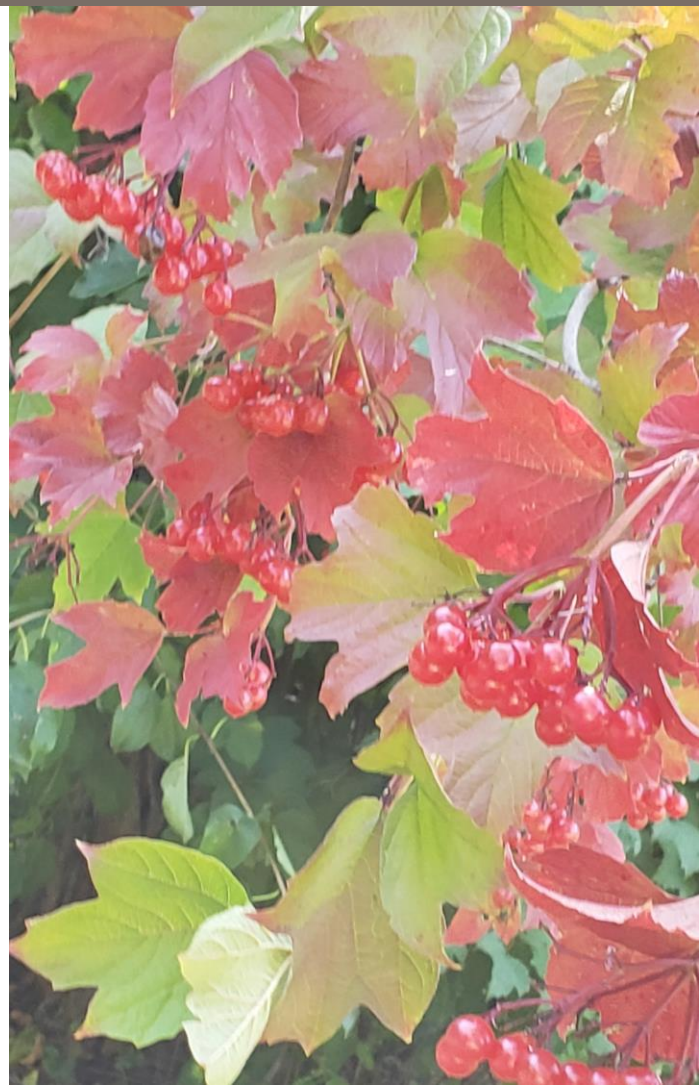
- Initial waivers are approved for up to 3 years, after that renewals are approved for up to 5 years.
- States are required to have a 30 day public comment period. This must be completed before the waiver is submitted to CMS for approval.
- CMS has 90 days to review and approve the renewal. During this time period CMS and the State will engage in a question and answer period. If significant concerns arise and they unable to be resolved, CMS may stop the clock until a resolution has been agreed to. This may delay the effective date of the proposed changes.

COMPONENTS OF THE WAIVER & ND'S PROPOSED CHANGES

Appendix A Waiver Administration and Operation: explains who is operating the waiver, who has oversight of the waiver, any contracted entities (fiscal agent) and assessment methods of the entities.

- The State Medicaid agency must retain oversight over all aspects of the Waiver.
- The DD Division has day to day responsibility for operation.
- There is one performance measure within this appendix.

No proposed changes to Appendix A.



COMPONENTS OF THE WAIVER & ND'S PROPOSED CHANGES

Appendix B Participant Access & Eligibility explains who the waiver is serving, costs to the individual if any, number served, reserved capacity if any, eligibility groups and evaluation & reevaluation of level of care (LOC).

- Waiver capacity- these include a "reserved capacity" which is 190 total slots for ID, emergency, & individual employment.
  - Year 1- 5,830 slots
  - Year 2- 5,980 slots
  - Year 3- 6,130 slots
  - Year 4- 6,280 slots
  - Year 5- 6,430 slots
- There are two performance measures within this appendix.

COMPONENTS OF THE WAIVER & ND'S PROPOSED CHANGES

Key concepts of Appendix B

- **Who can receive a HCBS waiver service?**
  - The person must be eligible for Medicaid, according to your state rules; **AND**
  - Meet what's called the level of care (LOC) for:
    - Nursing Home
    - ICF/IID
    - Hospital or
    - Other Medicaid-financed institutional care
  - The State must select **one** of the three principal target groups and for the target group selected, may select one more of the subgroups listed.
    - Aged (persons age 65 and older) or disabled; or both;
    - Persons with intellectual disability or a developmental disability or both;
    - Persons with mental illnesses.

COMPONENTS OF THE WAIVER & ND'S PROPOSED CHANGES

Key concepts of Appendix B continued

- The waiver we are referring to is persons with an "intellectual disability or a developmental disability". The state selected both options.
- Individuals who are in the waiver target group AND would otherwise require the Medicaid covered level of care (ICF/IID) specified for the waiver may be considered for entrance to the waiver. Both conditions must be met.
- **Intellectual Disability or Developmental Disability group** – this target group is composed of individuals who otherwise would require the level of care furnished in an ICF/IID which is defined as serving persons with intellectual disabilities or persons with related conditions. States are advised that the ICF/IID level of care is reserved for persons with intellectual disability or a related condition as defined in 42 CFR 435.1009 . Participants linked to the ICF/IID level of care must meet the "related condition" definition when they are not diagnosed as having an intellectual disability. Some persons who might qualify as having a "developmental disability" under the Federal DD Assistance and Bill of Rights Act may not meet ICF/IID level of care. While "Developmental Disability" and "Related Conditions" overlap, they are not equivalent. The definition of related conditions is at 42 CFR 435.1009 and is functional rather than tied to a fixed list of conditions

COMPONENTS OF THE WAIVER & ND'S PROPOSED CHANGES

Proposed changes to Appendix B

- Updated reserved capacity slots– these include a "reserved capacity" for infant development, emergency, and individual employment. The total reserved capacity remains at 190, but the distribution of the categories would be different.
  - Infant Development increased from 135 to 170
  - Emergency decreased from 50 to 15
  - Individual Employment stays at 5
- Increase slots for waiver year 2 by 400 slots and continue with 150 each year.
  - Year 2 6,380
  - Year 3 6,530
  - Year 4 6,680
  - Year 5 6,830

COMPONENTS OF THE WAIVER & ND'S PROPOSED CHANGES

Appendix C Participant Services - summary of all the services, any service limitations, and provider requirements

- There are four performance measures within this appendix
- **Current Services**

- **Day Habilitation**
- **Homemaker**
- **Independent Habilitation**
- **Individual Employment Support**
- **Prevocational Services**
- **Residential Habilitation**
- **Extended Home Health Care**
- **Adult Foster Care**
- **Behavioral Consultation**
- **Environmental Modifications**
- **Equipment and Supplies**
- **Family Care Option**
- **In-Home Supports**
- **Infant Development**
- **Parenting Support**
- **Small Group Employment Support**

COMPONENTS OF THE WAIVER & ND'S PROPOSED CHANGES

Proposed changes to Appendix C

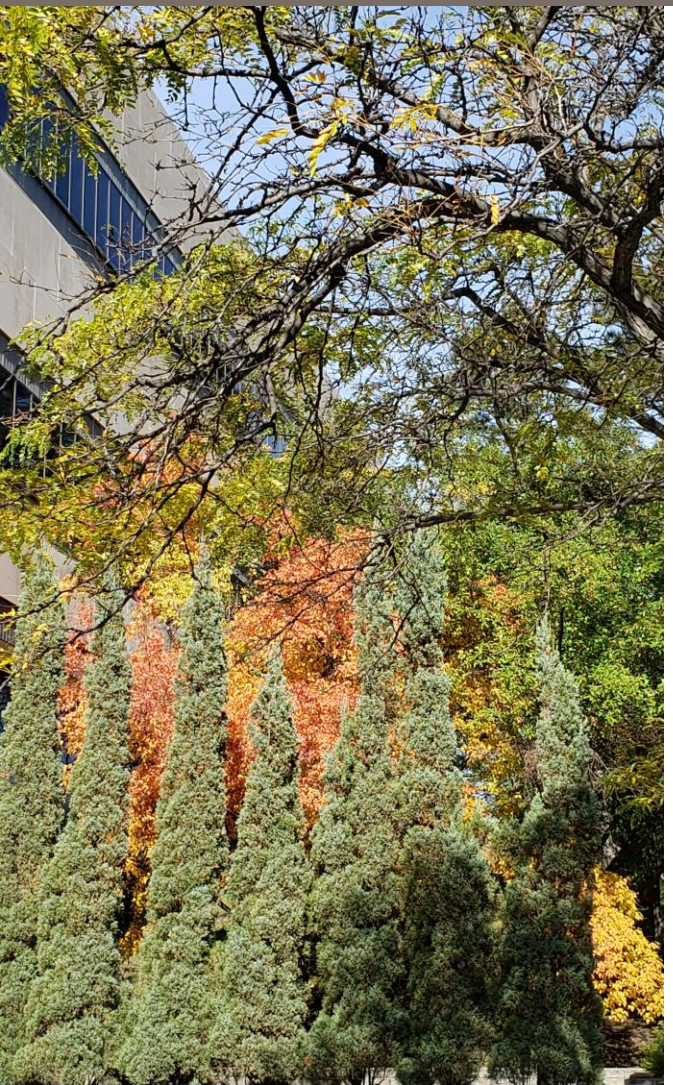
- **Modification and/or clarifications in the following services:**
  - Environmental Modifications
    - Added clarification of "permanent" to ramps and lifts, elevators, manual or other electronic lifts.
  - Equipment and Supplies
    - Added clarification of i.e. portable ramps and lifts under (a) devices, controls, or appliances, specified in the participant's plan, that enable participants to increase their ability to perform activities of daily living
    - Added clarification under limits $4,000 per participant per waiver year with a maximum of $20,000 per waiver period.

COMPONENTS OF THE WAIVER & ND'S PROPOSED CHANGES

Proposed changes to Appendix C continued

- **In-home Supports**
  - Added clarification, the participants receiving In Home Supports (IHS) are supported in the home and community in which they live or in the home of the support staff, if the home is approved by the legal decision maker.
  - Added clarification, IHS may not be provided to a group of participants or in a facility-based setting (i.e. daycare, school).
- In Residential Habilitation, Day Habilitation, Prevocational Services, and Small Group Employment Services an individual may be eligible for a higher medical acuity level based on their assessed medical needs resulting in higher reimbursement rate.

COMPONENTS OF THE WAIVER & ND'S PROPOSED CHANGES



Proposed changes to Appendix C continued

- **Extended Home Health**
  - Added clarification, a nurse assessment, nursing care plan, and an order written by the participant's primary heath care provider are required.
  - Services can be provided by a relative who does not live with the participant

COMPONENTS OF THE WAIVER & ND'S PROPOSED CHANGES

Appendix D – Participant-Centered Planning & Service Delivery explains the participant development of the service plan, implementation, and monitoring of the plan

- There are four performance measures within this appendix.

Key concepts in Appendix D

- Waiver requirement that everyone has an individual plan of care developed by qualified individuals.
- Individual can determine who participates in the process and they can direct the process.
- The plan must be reviewed at least annually or when the individual's needs change.
- Must address risks and risk management strategies in the plan including emergency back up plans.

No proposed changes.

COMPONENTS OF THE WAIVER & ND'S PROPOSED CHANGES

Appendix E – Participant Direction of Services explains in the waiver how participants can self-direct their services, what services are self-directed, and whether or not a third party is involved. Also explains DD Program Management as an administrative activity, termination of self-directed services, and budget authority of these services.

No proposed changes.

COMPONENTS OF THE WAIVER & ND'S PROPOSED CHANGES

Appendix F- Participants Rights: explains a participant's opportunity for a fair hearing, disputes resolutions, grievances, and complaints

Key concepts in Appendix F:

- Freedom of choice of providers – People can choose any provider they want that is qualified, under state rules to do the work
- Appeal rights when a service is denied, suspended, terminated or reduced.

No proposed changes.

COMPONENTS OF THE WAIVER & ND'S PROPOSED CHANGES

- **Appendix G- Participants Safeguards:** explains what the state will do with Abuse, Neglect, Exploitation (A, N, E) and management of medication administration (how reported, when to report, what to report, oversight, interventions, and safeguards)

  - There are four performance measures within this appendix.

COMPONENTS OF THE WAIVER & ND'S PROPOSED CHANGES

- **Key concepts in Appendix G:**
  - The State must have a formal system to monitor health and safety
  - State oversight of the service system with providers through visits
  - Collecting data on system performance and waiver assurances
  - Getting information from waiver participants about how they like their services
  - A formal system to prevent report and resolve instances of abuse or neglect.
  - Operate the waiver statewide unless the state has permission to only have the waiver in some areas.
  - Make sure everyone on the waiver can generally get the same types of services all over the state-
  - Make sure that people with the same type of needs get the same amount of money to spend on services – called equity of services

No proposed changes.

COMPONENTS OF THE WAIVER & ND'S PROPOSED CHANGES

Appendix H – Quality Improvement Strategy

a summary of the plan for how the wavier will continually determine if it is operating as designed, meeting assurances and requirements, and achieving desired outcome for waiver participants in identifying issues, making corrections and implementing improvements

No proposed changes.

COMPONENTS OF THE WAIVER & ND'S PROPOSED CHANGES

Appendix I –Financial Accountability explains financial integrity and accountability (rates, billings, claims) through only approved systems

- There are two performance measures within this appendix.

Key concepts in Appendix I:

- The state must be financially accountable for ALL funds. This means the state has to know and report:
  - How the money is spent, for what people and what services.
- Portability of funding - Medicaid money belongs to the individual not the provider.

COMPONENTS OF THE WAIVER & ND'S PROPOSED CHANGES

Proposed changes

- Updated Rate Determination Methods for Residential Habilitation, Day Habilitation, Prevocational Services Small Group Employment Support, and Individual Employment Support.
- Removed vacancy language per CMS and added Personal Assistance Retainer Payment in Residential Habilitation.
- Removed absence factor per CMS and replaced with a vacancy inflator with is included in the rate intended to cover costs when a client is no longer in the residential habilitation setting with no intent to return.

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Appendix J – Cost Neutrality Demonstration:

- The state must assure CMS that the waiver is cost neutral – which means that the average cost per person under the waiver can't be more than the average cost per person in an ICF/IID.

Proposed changes includes adjustments made through out the amendment (i.e. adjustment for additional slots)

CONTACT INFORMATION

The anticipated effective date of the proposed amendment is expected to be April 1, 2020.

Comments and public input on the proposed changes will be accepted from Oct. 21, 2019 until 5 p.m. Central Time on Nov. 20, 2019.

Comments will be accepted in the following ways:

- Email: hzander@nd.gov
- Phone: 701.328.8945, or 711 (TTY) for text telephone users
- Mail: North Dakota Department of Human Service
  Attn: Developmental Disabilities Division/Heidi Zander
  1237 West Divide Avenue Suite 1A
  Bismarck, ND 58501

A copy of the renewal application is available at www.nd.gov/dhs/services/disabilities/dd.html or can be obtained by contacting the DD Division.


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