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**TITLE 460 DIVISION OF DISABILITY, AGING, AND  
REHABILITATIVE SERVICES**

**Proposed Rule**  
LSA Document #03-99

**DIGEST**

Adds 460 IAC 8 to establish provisions affecting providers of assisted living services under the Medicaid waiver authorized by P.L.100-2000. Effective 30 days after filing with the secretary of state.

**460 IAC 8**

SECTION 1. 460 IAC 8 IS ADDED TO READ AS FOLLOWS:

**ARTICLE 8. ASSISTED LIVING MEDICAID WAIVER SERVICES**

**Rule 1. Assisted Living Medicaid Waiver Services**

**460 IAC 8-1-1 Application of rule**

**Authority:** IC 12-8-8-4; IC 12-9-2-3

**Affected:** IC 12-15; IC 16-28

**Sec. 1. This rule applies to the provision of assisted living Medicaid waiver services in residential care facilities licensed under IC 16-28 and 410 IAC 16.2-5. (Division of Disability, Aging, and Rehabilitative Services; 460 IAC 8-1-1)**

**460 IAC 8-1-2 Definitions**

**Authority:** IC 12-8-8-4; IC 12-9-2-3

**Affected:** IC 12-8-6-1; IC 12-9-1-1; IC 12-10-1-1; IC 12-10-1-4; IC 12-10-13-4.5; IC 12-15; IC 16-28; IC 16-36-1-5

**Sec. 2. The following definitions apply throughout this rule:**

**(1) "Activities of daily living" means those personal functional activities required by a recipient for continued well being, including the following:**

**(A) Mobility.**

**(B) Dressing.**

**(C) Bathing.**

**(D) Eating.**

**(E) Toileting.**

**(F) Transferring.**

**(2) "Aging in place" means being in a care environment that will provide the recipient with a range of care options as the needs of the recipient change. Aging in place does not preclude assisting a recipient in relocating to a new care environment, if necessary.**

**(3) "Applicant" means a natural person or entity that applies to provide assisted living Medicaid waiver services.**

**(4) "Area agency on aging" means the agency designated by the BAIHS services in each planning and service area under IC 12-10-1-4(18).**

**(5) "Assessed impairment level" means the level of service needed by a recipient as determined using the level of service assessment form.**

**(6) "Assisted living Medicaid waiver services" means the array of services provided to a recipient residing in a facility, including any or all of the following:**

- (A) Personal care services.
- (B) Homemaker services.
- (C) Chore services.
- (D) Attendant care services.
- (E) Companion services.
- (F) Medication oversight (to the extent permitted under state law).
- (G) Therapeutic social and recreational programming.

(7) “Assisted living Medicaid waiver services provider” means an entity approved to provide assisted living Medicaid waiver services.

(8) “Attendant care” means hands-on care, of both a supportive and health-related nature, specific to the needs of a medically stable, physically disabled individual.

(9) “BAIHS” means the bureau of aging and in-home services as created under IC 12-10-1-1.

(10) “Case manager” means the individual or agency enrolled by the office of Medicaid policy and planning chosen by the recipient to provide case management services.

(11) “Choice” means a recipient has viable options that enable him or her to exercise greater control over his or her life. Choice is supported by the provision of sufficient private and common space within the facility to provide opportunities for recipients to select where and how to spend time and receive personal assistance.

(12) “Chore services” means services needed to maintain the recipient’s residential unit in a clean, sanitary, and safe environment.

(13) “Companion services” means nonmedical care, supervision, and socialization services. It does not include assisting or supervising the recipient with meal preparation, laundry, or shopping.

(14) “Complaint” means an allegation that an assisted living Medicaid waiver services provider has violated this article or a dissatisfaction relating to the condition of the facility or the recipient.

(15) “Dignity” means providing support in such a way as to validate the self-worth of the recipient. Dignity is supported by designing a structure that allows personal assistance to be provided in privacy and delivering services in a manner that shows courtesy and respect.

(16) “Division” means the division of disability, aging, and rehabilitative services created under IC 12-9-1-1.

(17) “Facility” means a facility licensed under IC 16-28 and 410 IAC 16.2-5.

(18) “Homelike” means an environment that has the qualities of a home, including privacy, comfortable surroundings, and the opportunity to modify one’s living area to suit one’s individual preferences, which promotes the dignity, security, and comfort of recipients through the provision of personalized care and services to encourage independence, choice, and decision making by the recipients. A homelike environment also provides recipients with an opportunity for self-expression, and encourages interaction with the community, family, and friends.

(19) “Homemaker services” means services consisting of general household activities, including meal preparation and routine household care.

(20) “Independence” means being free from the control of others and being able to assert one’s own will, personality, and preferences within the parameters of the house rules or residency agreement.

(21) “Interdisciplinary team” means a group of individuals, which must include the recipient, and which may be composed of, but is not limited to:

- (A) the recipient’s family and/or legal representative;
- (B) the recipient’s case manager;
- (C) a registered nurse; and
- (D) the provider of service;

who work together to develop the recipient’s individual plan of care.

(22) “Legal representative” means a person who is:

- (A) a guardian;
- (B) a health care representative;
- (C) an attorney in fact; or
- (D) a person authorized by IC 16-36-1-5 to give health care consent.

(23) “Level of service” means the specific level of service that an assisted living Medicaid waiver services provider is authorized to provide to a recipient in accordance with the recipient’s plan of care and that is based on the assessed impairment level of the recipient.

(24) “Medication oversight services” means personnel operating within the scope of applicable licenses and/or certifications providing reminders or cues to recipients to take medication, open pre-set medication containers, and handle

and/or dispense medication.

(25) “Office of Medicaid policy and planning” means the office of Medicaid policy and planning created by IC 12-8-6-1.

(26) “Ombudsman” means a representative of the office of the state long term care ombudsman as provided in IC 12-10-13-4.5.

(27) “Personal care services” means assistance with eating, bathing, dressing, personal hygiene, and activities of daily living.

(28) “Plan of care” means the written plan developed by the interdisciplinary team, on which the recipient’s case manager documents the proposed Medicaid waiver services, the Medicaid state plan services, as well as other medical services and social services and informal community supports that are needed by the recipient to ensure the health and welfare of the recipient.

(29) “Provider” means an entity approved under this article to provider assisted living Medicaid waiver services.

(30) “Recipient” means an individual who is receiving assisted living Medicaid waiver services.

(31) “Room and board” means the provision of meals, a place to sleep, laundry, and housekeeping.

(32) “Service plan” means a written plan for services to be provided by the provider, developed by the provider, the recipient, and others, if appropriate, on behalf of the recipient, consistent with the services needed to ensure the health and welfare of the recipient. It is a detailed description of the capabilities, needs, choices, measurable goals, and if applicable the measurable goals and managed risk issues, and documents the specific duties to be performed for the recipient, including who will perform the task, when, and the frequency of each task based on the individual’s assessed needs and preferences.

(33) “Services” means activities that:

(A) help a recipient develop skills to increase or maintain level of functioning; or

(B) assist the recipient in performing personal care or activities of daily living or individual social activities.

(34) “Supportive services” means services that substitute for the absence, loss, diminution, or impairment of a physical or cognitive function.

*(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 8-1-2)*

#### **460 IAC 8-1-3 Provider approval**

**Authority:** IC 12-8-8-4; IC 12-9-2-3

**Affected:** IC 12-10-15; IC 12-15; IC 16-28

**Sec. 3.** In order to be approved by the division to provide assisted living Medicaid waiver services, an applicant shall do the following:

(1) Complete an application form prescribed by the division.

(2) Submit evidence that the applicant has:

(A) a license required by IC 16-28 and 410 IAC 16.2-5 for each facility at which assisted living Medicaid waiver services will be provided; and

(B) registered each facility at which assisted living services will be provided as a housing with services establishment under IC 12-10-15.

(3) Indicate what level of services the applicant will provide.

(4) Submit a written and signed statement that the applicant will comply with the provisions of this article.

(5) Submit a written and signed statement that assisted living Medicaid waiver services will not be provided at a facility that is not licensed pursuant to IC 16-28 and 410 IAC 16.2-5.

(6) Submit a written and signed statement that assisted living Medicaid waiver services will not be provided at a facility that is not registered as a housing with services establishment under IC 12-10-15.

(7) Submit a written and signed statement that the applicant will provide services to a recipient as set out in the recipient’s plan of care.

*(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 8-1-3)*

#### **460 IAC 8-1-4 Decision on approval; administrative review; provider agreement**

**Authority:** IC 12-8-8-4; IC 12-9-2-3

**Affected:** IC 4-21.5; IC 12-10-15; IC 12-15; IC 16-28

**Sec. 4. (a)** The division shall determine whether an applicant meets the requirements under this article.

(b) The division shall notify an applicant in writing of the division's determination within sixty (60) days of submission of a completed application.

(c) If an applicant is adversely affected or aggrieved by the division's determination, the applicant may request administrative review of the determination. Such request shall be made in writing and filed with the direction of the division within fifteen (15) days after the applicant receives written notice of the division's determination. Administrative review shall be conducted pursuant to IC 4-21.5.

(d) Once an applicant has been approved by the division to provide assisted living Medicaid waiver services, an applicant cannot provide assisted living Medicaid waiver services until the applicant has completed and submitted a Medicaid waiver assisted living provider agreement.

(e) No person or entity shall represent themselves as operating as an assisted living Medicaid waiver provider or accept placement of a recipient without first being approved to provide assisted living Medicaid waiver services. (*Division of Disability, Aging, and Rehabilitative Services; 460 IAC 8-1-4*)

#### **460 IAC 8-1-5 Facility requirements**

**Authority:** IC 12-8-8-4; IC 12-9-2-3

**Affected:** IC 12-10-15-7; IC 12-15; IC 16-28

**Sec. 5. (a)** Each facility at which assisted living Medicaid waiver services are provided shall meet the following requirements:

(1) Maintain a current residential care facility license as required by IC 16-28 and 410 IAC 16.2-5.

(2) Comply with the requirements of IC 12-10-15.

(3) Provide assisted living Medicaid waiver service recipients with individual residential living units that include the following:

(A) A bedroom.

(B) A private bath.

(C) A substantial living area.

(D) A kitchenette that contains a refrigerator, a food preparation area, and a microwave or stovetop for hot food preparation.

(b) If a facility was in operation prior to July 1, 2001, and was in compliance with the requirements of IC 12-10-15-7 on June 30, 2001, individual living units provided to recipients shall have a minimum of one hundred sixty (160) square feet of livable floor space, including closets and counters, but excluding space occupied by the bathroom.

(c) If a facility was in operation prior to the effective date of this rule and was licensed under 410 IAC 16.2-5, individual living units provided to recipients shall contain the following:

(1) A substantial living area of at least one hundred sixty (160) square feet of livable floor space, including closets and counter space, but excluding space occupied by the bathroom.

(2) A sleeping area, not necessarily designated as a separate bedroom from the living area.

(3) A semiprivate bath or shower.

(4) A kitchenette that contains a refrigerator, a food preparation area, and a microwave.

(5) Access to a stovetop/oven for hot food preparation in the common area.

(d) All other facilities shall provide recipients with individual living units meeting the following additional requirements:

(1) Contain a minimum of two hundred twenty (220) square feet of livable space including closets and counters, but excluding space occupied by the bathroom.

(2) Contain a bath that is wheelchair accessible. Fifty percent (50%) of the units available to recipients shall have a roll-in shower.

(3) Contain individual thermostats.

(e) Residential units provided to recipients must be single units unless the recipient chooses to live in dual occupied unit and the recipient and the other occupant consent to the arrangement.

(f) Residential units provided to recipients shall be able to be locked at the discretion of the recipient, unless a physician or a mental health professional certifies in writing that the recipient is cognitively impaired so as to be a danger to self or others if given the opportunity to lock the door. This subsection does not apply if this requirement conflicts with applicable fire codes. *(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 8-1-5)*

**460 IAC 8-1-6 Assisted living Medicaid waiver services**

**Authority:** IC 12-8-8-4; IC 12-9-2-3

**Affected:** IC 12-15; IC 16-28-13-1

**Sec. 6. (a) The provider shall provide the following assisted living Medicaid waiver services:**

- (1) Personal care services.**
- (2) Homemaker services.**
- (3) Chore services.**
- (4) Attendant care services, including supportive services.**
- (5) Companion services.**
- (6) Medication oversight services as permitted by state law.**
- (7) Therapeutic, social, and recreational programming.**

**(b) Assisted living Medicaid waiver services shall be provided to a recipient as outlined in a recipient's plan of care, as developed by the recipient's case manager and interdisciplinary team, as follows:**

- (1) The provider shall provide the intensity and level of services as outlined in the recipient's plan of care. The intensity and level of services shall range from Level 1 for recipients who are the least impaired and require the least intense level of services to Level 3 for the most severely impaired recipients who require the most intense level of services.**
- (2) Should a recipient require more intense assisted living Medicaid waiver services (a higher level of services) than the provider is approved to provide, or require services more intense than Level 3, the provider shall assist the recipient in transferring to a more appropriate setting and shall observe all discharge requirements of 410 IAC 16.2-5.**

**(c) The initial plan of care must be approved by the office of Medicaid policy and planning prior to the initiation of assisted living Medicaid waiver services. It must be updated at least every ninety (90) days and annually or when the recipient experiences a significant change per 410 IAC 16.2-1.1-70.**

**(d) Provider staff shall provide information to the recipient's interdisciplinary team, as requested by the recipient's interdisciplinary team. If requested by a recipient and/or recipient's case manager, appropriate provider staff shall serve on a recipient's interdisciplinary team.**

**(e) All direct care shall be provided by personnel specified in IC 16-28-13-1.**

**(f) As appropriate, services shall be provided to recipients in their own living units.**

**(g) The physical environment and the delivery of assisted living Medicaid waiver services shall be designed to enhance autonomy in ways that reflect personal and social values of dignity, privacy, independence, individuality, choice, and decision making of recipients. The provider shall provide services in a manner that:**

- (1) makes the services available in a homelike environment for recipients with a range of needs and preferences;**
- (2) facilitates aging in place by providing flexible services in an environment that accommodates and supports the recipient's individuality; and**
- (3) supports negotiated risk, which includes the recipient's right to take responsibility for the risks associated with decision making.**

**(h) If requested by a recipient, the provider will assist a recipient and a recipient's case manager in obtaining, arranging, and coordinating services outlined in a recipient's plan of care that are not assisted living Medicaid waiver services.**

**(i) Should other entities furnish care directly, or under arrangement with the provider, that care shall supplement the care provided by the provider but may not supplant it. *(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 8-1-6)***

**460 IAC 8-1-7 Levels of service; level of service assessment/evaluation tool; provider enrollment**

**Authority:** IC 12-8-8-4; IC 12-9-2-3

**Affected:** IC 12-15

**Sec. 7. (a)** Assisted living Medicaid waiver services will be provided and paid according to three (3) levels of service, with Level 1 being the least impaired and Level 3 the most impaired/dependent. No assisted living Medicaid waiver services may be provided that meet the skilled level of care as defined in 405 IAC 1-3-1.

**(b)** The impairment level assessment tool for assisted living Medicaid waiver services will be based on the point system definitions designated on the “level of service assessment form” and will be documented on forms prescribed by the division. *(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 8-1-7)*

**460 IAC 8-1-8 General service standards**

**Authority:** IC 12-8-8-4; IC 12-9-2-3

**Affected:** IC 12-15

**Sec. 8. (a)** A provider shall provide assisted living Medicaid waiver services only to persons approved by the office of Medicaid policy and planning to receive assisted living Medicaid waiver services.

**(b)** A provider shall do the following:

- (1)** Ensure that recipients have control over their time, space, and lifestyle to the extent that the health, safety, and well-being of other recipients is not disturbed.
- (2)** Promote the recipient’s right to exercise decision making and self-determination to the fullest extent possible.
- (3)** Provide services for recipients in a manner and in an environment that encourages maintenance or enhancement of each recipient’s quality of life, and promotes the recipient’s privacy, dignity, choice, independence, individuality, and decision making ability.
- (4)** Provide a safe, clean, and comfortable homelike environment, allowing recipients to use their personal belongings to the extent possible.

**(c)** The provider shall complete a service plan within thirty (30) days of move-in or the recipient’s receipt of assisted living Medicaid waiver services.

**(d)** The provider shall ensure the service plan does the following:

- (1)** Includes recognition of the recipient’s capabilities and choices and defines the division of responsibility in the implementation of services.
- (2)** Addresses, at a minimum, the following elements:
  - (A)** Assessed health care needs.
  - (B)** Social needs and preferences.
  - (C)** Personal care tasks.
  - (D)** Limited nursing and medication services, if applicable, including frequency of service and level of assistance.
- (3)** Is signed and approved by the recipient, the provider, the registered nurse, the case manager.
- (4)** Includes the date the plan was approved.

**(e)** The service plan shall support the principles of dignity, privacy, and choice in decision making, individuality, and independence.

**(f)** The provider shall provide the recipient, case manager, and area agency on aging with a copy of the service plan and place a copy in the recipient’s record.

**(g)** The provider shall update the plan when there are changes in the services the recipient needs and wants to receive. At a minimum, the provider shall review the service plan every ninety (90) days for assisted living recipients. *(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 8-1-8)*

**460 IAC 8-1-9 Negotiated risk plan appropriate to level of service**

**Authority:** IC 12-8-8-4; IC 12-9-2-3

**Affected:** IC 12-15

**Sec. 9. (a)** If deemed appropriate and determined to be necessary by a recipient's interdisciplinary team, the provider shall establish a negotiated risk plan with a recipient.

**(b)** The negotiated risk plan shall address unusual situations in which a recipient's assertion of a right, preference, or behavior exposes the recipient or someone else to a real and substantial risk of injury.

**(c)** The negotiated risk plan shall identify and accommodate a recipient's need in a way that is acceptable to both the provider and the recipient.

**(d)** A negotiated risk plan shall include the following:

**(1)** An explanation of the cause or causes of concern.

**(2)** The possible negative consequences to the recipient and/or others.

**(3)** A description of the recipient's preferences.

**(4)** Possible alternatives or interventions to minimize the potential risks associated with the recipient's preference/action.

**(5)** A description of the assisted living Medicaid waiver services the provider will provide to accommodate the recipient's choice or minimize the potential risk and services others entities will provide to accommodate the recipient's choice or minimize the potential risk.

**(6)** The final agreement, if any, reached by all involved parties.

**(e)** The provider shall involve the recipient and the recipient's interdisciplinary team in developing, implementing, and reviewing a negotiated risk plan.

**(f)** The provider shall review a negotiated risk plan with a recipient and a recipient's team at least quarterly. *(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 8-1-9)*

#### **460 IAC 8-1-10 Recipient records**

**Authority:** IC 12-8-8-4; IC 12-9-2-3

**Affected:** IC 12-10-13; IC 12-15

**Sec. 10. (a)** An individual recipient record shall be developed and kept current and available on the premises for each recipient receiving assisted living Medicaid waiver services. In addition to the requirements of 410 IAC 16.2-5-8.1, a recipient's record shall include the following:

**(1)** Plan of care.

**(2)** Negotiated risk agreement, if any.

**(3)** A written report of all significant incidents relating to the health or safety of a recipient, including the following:

**(A)** How and when the incident occurred.

**(B)** Who was involved.

**(C)** What action was taken by provider staff.

**(D)** The outcome to the recipient.

**(b)** Recipient records shall be readily available to all of the following:

**(1)** Caregivers.

**(2)** Representatives of the office of Medicaid policy and planning.

**(3)** The division.

**(4)** Recipients.

**(5)** A recipient's authorized representatives.

**(6)** A recipient's case manager.

**(7)** Interdisciplinary team members.

**(8)** The ombudsman, as provided for by IC 12-10-13.

**(9)** Other legally authorized persons.

(c) Records shall be kept for the time period required by 410 IAC 16.2-5-8.1 or a minimum of three (3) years, whichever is longer.

(d) If a recipient is transferred, discharged or the provider otherwise ceases to provide services, the recipient's records shall be transferred with the recipient pursuant to 410 IAC 16.2-5-8.1. *(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 8-1-10)*

#### **460 IAC 8-1-11 Administration**

**Authority:** IC 12-8-8-4; IC 12-9-2-3

**Affected:** IC 12-10-3-9; IC 12-10-13; IC 12-15

**Sec. 11. The provider shall do the following:**

- (1) Comply with all requirements of this article.
- (2) Ensure all provider staff are knowledgeable about applicable recipient rights.
- (3) Not require a recipient to sign any admission contract or agreement that purports to waive any rights of the recipient.
- (4) Develop and implement a complaint procedure and process that is responsive to recipient's complaints to assist in resolving agreement disputes between recipients and the provider.
- (5) Adopt procedures for securing and recording complaints and endorsements filed by recipients, recipients' designated representatives, and recipients' family members.
- (6) Post in a place and manner clearly visible to recipients and visitors the Indiana state department of health, state and local ombudsman toll-free complaint telephone numbers, and telephone numbers for contacting a case manager through the local area agency on aging.
- (7) Comply with all federal and state statutory and regulatory requirements regarding nondiscrimination in all aspects of the provider's operation.
- (8) Encourage recipients and the recipient council, if there is one, to provide input to the facility about recipients' preferences for food choices, taking into account the cultural and religious needs of recipients.
- (9) Ensure all instances of suspected abuse, neglect, exploitation, or abandonment are reported to the adult protective services program, as required in IC 12-10-3-9 and 460 IAC 1-2-10, and to the local law enforcement agency.
- (10) Not have any sexual contact with any recipient and shall ensure that provider staff and students not have sexual contact with any recipient.
- (11) Permit the office of Medicaid policy and planning, the division, the ombudsman, and other state representatives to enter the facility without prior notification in order to monitor the provider's compliance with this article and to conduct complaint investigations, including, but not limited to, observing and interviewing recipients and accessing recipient records.

*(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 8-1-11)*

#### **460 IAC 8-1-12 Payment for room and board**

**Authority:** IC 12-8-8-4; IC 12-9-2-3

**Affected:** IC 12-15

**Sec. 12. Each recipient is responsible for payment of the room and board services. The provider shall charge recipients room and board rates that are no higher than the SSI rate current at the time room and board services are provided, less the amount of the personal needs allowance for room and board for Medicaid eligible individuals.** *(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 8-1-12)*

#### ***Notice of Public Hearing***

*Under IC 4-22-2-24, notice is hereby given that on July 22, 2003 at 9:00 a.m., at the Indiana Government Center-South, 402 West Washington Street, Room W451, Conference Room A, Indianapolis, Indiana the Division of Disability, Aging, and Rehabilitative Services will hold a public hearing on a proposed new rule concerning provisions affecting providers of assisted living services under the Medicaid waiver authorized by P.L.100-2000. If an accommodation is required to allow an individual with a disability to participate in this meeting, please contact Kevin Wild at (317) 233-2582 at least 48 hours prior to the meeting. Copies of these rules are now on file at the Indiana Government Center-South, 402 West Washington Street, Room W451 and Legislative Services Agency, One North Capitol, Suite 325, Indianapolis, Indiana and are open for public inspection.*



Howard Stevenson  
General Counsel  
Division of Disability, Aging, and Rehabilitative Services