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TITLE 460 DIVISION OF DISABILITY, AGING, AND REHABILITATIVE SERVICES

Proposed Rule
LSA Document #05-119

DIGEST

Adds 460 IAC 1.2 concerning home and community based services, which will include qualifications for approved providers of home and community based services; the process by which providers are approved; standards and requirements for approved providers of home and community based services; the process for monitoring and ensuring compliance with provider standards and requirements; the rights and protection of individuals receiving services; and definitions for home and community based services funded through BAIHS, including the current and future nursing facility level of care Medicaid waivers affected by this article. Effective 30 days after filing with the Secretary of State.

460 IAC 1.2

SECTION 1. 460 IAC 1.2 IS ADDED TO READ AS FOLLOWS:

ARTICLE 1.2. HOME AND COMMUNITY BASED SERVICES

Rule 1. Purpose

460 IAC 1.2-1-1 Purpose
Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-10.5-2-2; P.L.37-2005, SECTION 6
Affected: IC 12-10-1; IC 12-10-10

Sec. 1. The purpose of this article is to establish standards and requirements for DDARS-approved entities in the provision of the BAIHS funded HCBS to eligible approved individuals, including the nursing facility level of care Medicaid waivers. *(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 1.2-1-1)*

Rule 2. Applicability

460 IAC 1.2-2-1 Applicability
Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-10.5-2-2; P.L.37-2005, SECTION 6
Affected: IC 12-10-1; IC 12-10-10

Sec. 1. This article applies to the approval, requirements, and monitoring of providers of HCBS, funded through BAIHS, including the nursing facility level of care Medicaid waivers. *(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 1.2-2-1)*

460 IAC 1.2-2-2 Applicability; approval
Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-10.5-2-2; P.L.37-2005, SECTION 6
Affected: IC 12-10-1; IC 12-10-10

Sec. 2. Notwithstanding section 1 of this rule, the approval of a provider for those services that are licensed and regulated by the Indiana state department of health (ISDH) shall be deemed for those licensed services. For those services not licensed by the ISDH, the provider shall be subject to all other dictates and requirements set forth in this article. *(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 1.2-2-2)*

460 IAC 1.2-2-3 Limitations of article

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-10.5-2-2; P.L.37-2005, SECTION 6
Affected: IC 12-10-1; IC 12-10-10; IC 12-10-11.5

Sec. 3. Notwithstanding any other provision of this article, no provision of this article shall be interpreted to limit the following:
(1) The statutory requirements of IC 12-10-10 to do the following:
(A) Provide client centered care.
(B) Protect the rights of clients.
(2) The client protections under IC 12-10-11.5.
(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 1.2-2-3)

460 IAC 1.2-2-4 Conflict with Medicaid/Medicare provisions
Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-10.5-2-2; P.L.37-2005, SECTION 6
Affected: IC 12-10-1; IC 12-10-10

Sec. 4. If any provision of this article is deemed to be in conflict with any federal or state statute, regulation, bulletin, or rule that is specific to any funding source authorized under DDARS, specifically applicable to the Medicaid/Medicare program, then the other statute, regulation, bulletin, or rule shall supersede that part of this article in which the conflict is found. *(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 1.2-2-4)*

Rule 3. Service and Programmatic Definitions

460 IAC 1.2-3-1 Service and programmatic definitions; reference to other laws
Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-10.5-2-2; P.L.37-2005, SECTION 6
Affected: IC 12-10-1; IC 12-10-10

Sec. 1. (a) All service and programmatic definitions, as well as provider qualifications for the nursing facility level of care Medicaid waivers, which include aged and disabled, traumatic brain injury, medically fragile children, and assisted living, are found in and the same as those in the following CMS Medicaid waiver documents, as authorized under the provisions of Section 1915(c) of the Social Security Act, as follows:
(1) Indiana home and community based services for the aged and disabled (A&D), CMS control number #0210.920.R2.
(2) Indiana home and community based services for individuals with traumatic brain injury (TBI), CMS control number #40197.R1.
(3) Indiana home and community based services for medically fragile children (MFC), CMS control number #40171.90.R1.
(4) Indiana home and community based services for individuals on the assisted living waiver (AL), CMS control number #0362.

(b) Nursing facility level of care Medicaid waiver documents listed in subsection (a) shall be available at cost to the public by contacting DDARS during regular business hours.

(c) For purposes of this article, definitions applicable to services provided through CHOICE are the same as those found in 460 IAC 1-4-2.

(d) For purposes of this article, definitions applicable to services provided under the SSBG are the same as found in Title XX of the Social Security Act, at 42 CFR 1397-42 CFR 1397e and 470 IAC 13-1.

(e) For purposes of this article, definitions applicable to services provided under Title III are the same as those found in Title III, at 42 U.S.C. 3021-42 U.S.C. 3030s-12. *(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 1.2-3-1)*

Rule 4. Definitions of Terms for Home and Community Based Services

460 IAC 1.2-4-1 Applicability
Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-10.5-2-2; P.L.37-2005, SECTION 6
Affected: IC 12-10-1; IC 12-10-10

Sec. 1. The definitions in this rule relating to services administered through DDARS and funded by CHOICE, SSBG, and Title III apply throughout this article. *(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 1.2-4-1)*

460 IAC 1.2-4-2 "Abuse" defined
Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-10.5-2-2; P.L.37-2005, SECTION 6
Affected: IC 12-10-1; IC 12-10-10; IC 35-42-2-1; IC 35-46-1-12

Sec. 2. "Abuse" means actions against an individual including those set forth in IC 35-42-2-1 and IC 35-46-1-12. *(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 1.2-4-2)*

460 IAC 1.2-4-3 "Activities of daily living" or "ADL" defined
Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-10.5-2-2; P.L.37-2005, SECTION 6
Affected: IC 12-10-1; IC 12-10-10-6.3

Sec. 3. "Activities of daily living" or "ADL" means a measurement of an individual's degree of independence when:
(1) eating;
(2) bathing;
(3) dressing; and
(4) moving from one (1) place to another.
The term also refers to an activity described in the long term care services eligibility screen referred to in IC 12-10-10-6.3. *(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 1.2-4-3)*

460 IAC 1.2-4-4 "Adult protective services" or "APS" defined
Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-10.5-2-2; P.L.37-2005, SECTION 6
Affected: IC 12-10-1; IC 12-10-3; IC 12-10-10

Sec. 4. "Adult protective services" or "APS" means the entity established under IC 12-10-3. *(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 1.2-4-4)*

460 IAC 1.2-4-5 "Advocate" defined
Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-10.5-2-2; P.L.37-2005, SECTION 6
Affected: IC 12-10-1; IC 12-10-10

Sec. 5. (a) "Advocate" means a person who:
(1) assists an individual with decision making and self-determination; and
(2) is chosen by the individual or the individual's legal representative, if applicable.

(b) An advocate is not a legal representative unless legally appointed. *(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 1.2-4-5)*

460 IAC 1.2-4-6 "Aged" defined
Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-10.5-2-2; P.L.37-2005, SECTION 6
Affected: IC 12-10-1; IC 12-10-10

Sec. 6. "Aged" means the following:
(1) For Medicaid eligibility purposes, a person at least sixty-five (65) years of age.
(2) For Title III, SSBG, and CHOICE eligibility purposes, a person at least sixty (60) years of age.
(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 1.2-4-6)

460 IAC 1.2-4-7 "Area agency on aging" defined
Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-10.5-2-2; P.L.37-2005, SECTION 6
Affected: IC 12-10-1-6; IC 12-10-10

Sec. 7. "Area agency on aging" means an agency designated and contracted by DDARS to carry out the duties listed in IC 12-10-1-6. *(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 1.2-4-7)*

460 IAC 1.2-4-8 "BAIHS" defined
Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-10.5-2-2; P.L.37-2005, SECTION 6
Affected: IC 12-10-1-1; IC 12-10-10

Sec. 8. "BAIHS" means the bureau of aging and in-home services created under IC 12-10-1-1, or its successor agency. *(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 1.2-4-8)*

460 IAC 1.2-4-9 "Care plan" or "plan of care" defined
Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-10.5-2-2; P.L.37-2005, SECTION 6
Affected: IC 12-10-1; IC 12-10-10

Sec. 9. "Care plan" or "plan of care" means a plan as set forth by 460 IAC 1-4-6. *(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 1.2-4-9)*

460 IAC 1.2-4-10 "Case management services" or "CMS" defined
Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-10.5-2-2; P.L.37-2005, SECTION 6
Affected: IC 12-10-1; IC 12-10-10

Sec. 10. "Case management services" or "CMS" means a comprehensive service comprised of, but not limited to, the following:
(1) Assessment of an individual to determine the individual's:
(A) functional impairment level; and
(B) corresponding need for services.
(2) Development of a care plan addressing an eligible individual's needs.
(3) Supervision of the implementation of appropriate and available services for an eligible individual.
(4) Advocacy on behalf of an eligible individual's interests.
(5) Monitoring the quality of community and home care services provided to an eligible individual.
(6) Reassessment of the care plan to determine the continuing need and effectiveness of the community and home care services provided to an eligible individual under this article.
(7) Provision of information and referral services to individuals in need of community and home care services.
(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 1.2-4-10)

460 IAC 1.2-4-11 "Child protection services" or "CPS" defined
Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-10.5-2-2; P.L.37-2005, SECTION 6
Affected: IC 12-10-1; IC 12-10-10; IC 31-33

Sec. 11. "Child protection services" or "CPS" means services provided by the department of child services regarding reports of suspected child abuse or neglect under IC 31-33. *(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 1.2-4-11)*

460 IAC 1.2-4-12 "CHOICE" or "community and home options to institutional care for the elderly and disabled program" defined
Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-10.5-2-2; P.L.37-2005, SECTION 6
Affected: IC 12-10-1; IC 12-10-10-6

Sec. 12. "CHOICE" or "community and home options to institutional care for the elderly and disabled program" means the program created by IC 12-10-10-6. *(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 1.2-4-12)*

460 IAC 1.2-4-13 "DDARS" defined
Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-10.5-2-2; P.L.37-2005, SECTION 6
Affected: IC 12-9-1-1; IC 12-10-1; IC 12-10-10

Sec. 13. "DDARS" means the division of disability, aging, and rehabilitative services created under IC 12-9-1-1, or its successor agency or designee. *(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 1.2-4-13)*

460 IAC 1.2-4-14 "Direct care staff" defined
Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-10.5-2-2; P.L.37-2005, SECTION 6
Affected: IC 12-10-1; IC 12-10-10

Sec. 14. "Direct care staff" means a person or an agent or employee of a provider entity who provides hands-on services to an individual while providing any of the following services including, but not limited to:
(1) Respite.
(2) Attendant care.
(3) Adult foster care.
(4) Adult day services.
(5) Assisted living.
(6) Congregate care.
(7) Supported employment.
(8) Structured day program.
(9) Residential based habilitation.
(10) Transportation.
(11) Health care coordination.
(12) Occupation therapy.
(13) Physical therapy.
(14) Speech therapy.
(15) Behavior management.
(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 1.2-4-14)

460 IAC 1.2-4-15 "Endangered adult" defined
Authority: IC 12-10-3-2
Affected: IC 12-10-1; IC 12-10-3-2; IC 12-10-10

Sec. 15. "Endangered adult" has the meaning set forth in IC 12-10-3-2. *(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 1.2-4-15)*

460 IAC 1.2-4-16 "Entity" defined
Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-10.5-2-2; P.L.37-2005, SECTION 6
Affected: IC 12-10-1; IC 12-10-10

Sec. 16. "Entity" means any of the following:
(1) An association.
(2) A corporation.
(3) A limited liability company.
(4) A governmental entity.
(5) A partnership.
(6) A person with a contract.
(7) A person or persons providing or applying to provide HCBS.
(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 1.2-4-16)

460 IAC 1.2-4-17 "Executed agreement or contract" defined
Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-10.5-2-2; P.L.37-2005, SECTION 6
Affected: IC 12-10-1; IC 12-10-10

Sec. 17. "Executed agreement or contract" means an agreement that:
(1) has been signed by the involved entities; and
(2) is currently in effect.
(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 1.2-4-17)

460 IAC 1.2-4-18 "Exploitation" defined
Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-10.5-2-2; P.L.37-2005, SECTION 6

Affected: IC 12-10-1; IC 12-10-10; IC 35-46-1-12

Sec. 18. "Exploitation" means:
(1) unauthorized use of the:
(A) personal services.
(B) property; or
(C) identity;
of an individual; or
(2) any other type of criminal exploitation, including exploitation under IC 35-46-1-12;
for one's own profit or advantage or for the profit or advantage of another. *(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 1.2-4-18)*

460 IAC 1.2-4-19 "Home and community based services" or "HCBS" defined
Authority: IC 12-10-1; IC 12-10-11.5
Affected: IC 12-10-1; IC 12-10-10; IC 16-18-2-28.5

Sec. 19. "Home and community based services" or "HCBS" means supportive services provided within the limit of available funding to an eligible individual. The term includes, but is not limited to, the following:
(1) Homemaker services.
(2) Attendant care services under IC 16-18-2-28.5.
(3) Respite care services and other support services for primary or family caregivers.
(4) Adult day services.
(5) Home health services and supplies.
(6) Home delivered meals.
(7) Transportation.
(8) Self-directed attendant care services provided by a registered personal services attendant under the applicable statute to individuals in need of self-directed in-home care.
(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 1.2-4-19)

460 IAC 1.2-4-20 "Individual" defined
Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-10.5-2-2; P.L.37-2005, SECTION 6
Affected: IC 12-10-1; IC 12-10-10

Sec. 20. "Individual" means a person who has been determined eligible for services by a DDARS waiver specialist or DDARS under 42 CFR 441.302, or services under IC 12-10-10. If the term is used in the context indicating that the individual is to receive information, the term also includes the individual's legal representative. *(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 1.2-4-20)*

460 IAC 1.2-4-21 "Legal representative" defined
Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-10.5-2-2; P.L.37-2005, SECTION 6
Affected: IC 12-10-1; IC 12-10-10; IC 12-10-13-3.3; IC 16-36-1; IC 30-5-5-16

Sec. 21. "Legal representative" means any of the following:
(1) A guardian.
(2) A health care representative acting under IC 16-36-1.
(3) An attorney in fact for health care appointed under IC 30-5-5-16.
(4) An attorney in fact appointed under IC 30-5-5 who does not hold health care powers.
(5) The personal representative of the estate of a resident of a long term facility or client of home care services as set forth in IC 12-10-13-3.3.
(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 1.2-4-21)

460 IAC 1.2-4-22 "Long term care services eligibility screen" defined
Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-10.5-2-2; P.L.37-2005, SECTION 6
Affected: IC 12-10-1; IC 12-10-10-6.3

Sec. 22. "Long term care services eligibility screen" means the assessment tool established under IC 12-10-10-6.3. *(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 1.2-4-22)*

460 IAC 1.2-4-23 "Neglect" defined
Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-10.5-2-2; P.L.37-2005, SECTION 6
Affected: IC 12-10-1; IC 12-10-10; IC 12-11-1.1; IC 12-11-2.1

Sec. 23. "Neglect" means failure to provide:
(1) supervision;
(2) training;
(3) appropriate care;
(4) medical care; or
(5) medical supervision;
to an individual. *(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 1.2-4-23)*

460 IAC 1.2-4-24 "Other services" defined
Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-10.5-2-2; P.L.37-2005, SECTION 6
Affected: IC 12-10-1; IC 12-10-10

Sec. 24. "Other services" means services necessary to prevent an individual from losing his or her independence that are not traditionally listed as services funded by the CHOICE program or other funding sources. *(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 1.2-4-24)*

460 IAC 1.2-4-25 "Party" or "parties" defined
Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-10.5-2-2; P.L.37-2005, SECTION 6
Affected: IC 12-10-1; IC 12-10-10

Sec. 25. "Party" or "parties" means any entity directly involved in a dispute under this article. *(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 1.2-4-25)*

460 IAC 1.2-4-26 "Provider" or "service provider" defined
Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-10.5-2-2; P.L.37-2005, SECTION 6
Affected: IC 12-10-1; IC 12-10-10

Sec. 26. "Provider" or "service provider" means an entity approved by DDARS to provide an individual with agreed upon HCBS. *(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 1.2-4-26)*

460 IAC 1.2-4-27 "Reportable unusual occurrence" defined
Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-10.5-2-2; P.L.37-2005, SECTION 6
Affected: IC 12-10-1; IC 12-10-10

Sec. 27. "Reportable unusual occurrence" means an incident of suspected abuse, neglect, or exploitation or other situations that place at risk an adult or child receiving HCBS. *(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 1.2-4-27)*

460 IAC 1.2-4-28 "Secretary" defined
Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-10.5-2-2; P.L.37-2005, SECTION 6
Affected: IC 12-8-1-2; IC 12-10-1; IC 12-10-10

Sec. 28. "Secretary" means the secretary of family and social services appointed under IC 12-8-1-2. *(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 1.2-4-28)*

460 IAC 1.2-4-29 "Social services block grant" or "SSBG" defined
Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-10.5-2-2; P.L.37-2005, SECTION 6
Affected: IC 12-10-1; IC 12-10-10

Sec. 29. "Social services block grant" or "SSBG" means federal assistance dollars established by Title XX of the Social Security Act (codified by 42 CFR 1397-42 CFR 1397e and by 470 IAC 13-1). *(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 1.2-4-29)*

460 IAC 1.2-4-30 "Title III" defined
Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-10.5-2-2; P.L.37-2005, SECTION 6
Affected: IC 12-10-1; IC 12-10-10

Sec. 30. "Title III" means Title III of the Older Americans Act, found in 42 U.S.C. 3021 through 42 U.S.C. 3030s-12, as amended. *(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 1.2-4-30)*

460 IAC 1.2-4-31 "Warranty" defined
Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-10.5-2-2; P.L.37-2005, SECTION 6
Affected: IC 12-10-1; IC 12-10-10

Sec. 31. "Warranty", for a new product or service, means a written, binding document that states that, for not less than one (1) year, the service provider shall replace or adequately repair any device, instrument, or machine, including:
(1) durable medical equipment;
(2) personal emergency response systems; or
(3) home modifications;
that are found to be defective or have stopped working satisfactorily because of incorrect or inadequate installation. *(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 1.2-4-31)*

Rule 5. Types of Home and Community Based Services

460 IAC 1.2-5-1 Types of home and community based services
Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-10.5-2-2; P.L.37-2005, SECTION 6
Affected: IC 12-10-1; IC 12-10-10; IC 16-27-1; IC 25-23-1

Sec. 1. (a) Types of HCBS available under the aged and disabled Medicaid waiver include, but are not limited to, the following:
(1) Adult day services.
(2) Assisted living.
(3) Attendant care.
(4) Case management.
(5) Community transition.
(6) Congregate care.
(7) Environmental modifications.
(8) Home delivered meals.
(9) Homemaker.
(10) Nutritional supplements.
(11) Personal emergency response systems (PERS).
(12) Pest control.
(13) Respite.
(14) Specialized medical equipment.
(15) Transportation.
(16) Vehicle modifications.

(b) Types of HCBS available under the assisted living Medicaid waiver include, but are not limited to, the following:
(1) Assisted living.
(2) Case management.

(c) Types of HCBS available under the medically fragile children (MFC) Medicaid waiver include, but are not limited to, the following:
(1) Attendant care.

(2) Case management.
(3) Environmental modification.
(4) Respite care.
(5) Vehicle modification.

(d) Types of HCBS available under the traumatic brain injury (TBI) Medicaid waiver include, but are not limited to, the following:
(1) Adult day services.
(2) Attendant care.
(3) Behavior management.
(4) CMS.
(5) Environmental modifications.
(6) Health care coordination.
(7) Homemaker.
(8) Occupational therapy.
(9) PERS.
(10) Physical therapy.
(11) Residential habilitation.
(12) Respite care.
(13) Specialized medical equipment.
(14) Speech and language therapy.
(15) Structured day program.
(16) Supported employment services.
(17) Transportation.
(18) Vehicle modifications.

(e) Types of HCBS that may be brokered by the area agencies on aging funded through CHOICE or Title III or funds administered by DDARS, other than Medicaid waivers, include, but are not limited to, the following:
(1) Adaptive aids and devices.
(2) Adult day services.
(3) Attendant care.
(4) CMS.
(5) Congregate meals.
(6) Environmental modifications.
(7) Family caregiver support.
(8) Home health services.
(9) Home delivered meals.
(10) Homemaker.
(11) Home repair and maintenance services.
(12) Information and assistance.
(13) Legal assistance services.
(14) Nutrition education.
(15) Outreach services.
(16) Respite care.
(17) Therapy services.
(18) Transportation.
(19) Self-directed attendant care services provided by a registered personal services attendant under the applicable statute to persons in need of self-directed in-home care.
(20) Other services funded through the CHOICE program.
(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 1.2-5-1)

Rule 6. Provider Qualifications

460 IAC 1.2-6-1 Becoming an approved provider; maintaining approval
Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-10.5-2-2; P.L.37-2005, SECTION 6

Affected: IC 12-10-1; IC 12-10-10

Sec. 1. (a) In order to become an approved provider of HCBS, an entity shall do the following:
(1) Under CHOICE and Medicaid waiver:
(A) meet the current minimum service provider requirements as specified; and
(B) be a provider of an approved nursing facility level of care Medicaid waiver.
(2) Show proof of licensure or certification from the state of Indiana, to verify DDARS-approved status, if a license is required.
(3) Certify that, if approved, the entity will provide HCBS using only persons who meet the qualifications set out in section 3 of this rule.
(4) Retain, and have readily available, a copy of the most current executed signed provider agreement or contract as appropriate to the funding program and the provided service.
(5) Assure and document compliance with the executed provider agreement or contract and this rule.

(b) In order to maintain approved status as a provider of HCBS, an entity must do the following:
(1) Continue to maintain minimum standards set out in this article.
(2) Successfully complete the renewal process, as determined by DDARS.
(3) Receive written notice of renewal to be maintained by the provider.
(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 1.2-6-1)

460 IAC 1.2-6-2 General requirements
Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-10.5-2-2; P.L.37-2005, SECTION 6
Affected: IC 12-10-1; IC 12-10-10

Sec. 2. A service provider for HCBS funded through funds administered by DDARS shall do the following:
(1) Comply with the following:
(A) Applicable federal, state, county, or municipal regulations that govern the operation of the agency.
(B) Family and social services administration and DDARS laws, rules, and policies.
(2) Provide proof of the following:
(A) That insurance is in force as prescribed in 460 IAC 1.2-12-1(4).
(B) That any employee, agent, or staff of the provider agency meets all standards and requirements for the specific services the person will be providing.
(C) That licensed health professionals are checked for findings through the Indiana professional licensing agency.
(3) Obtain a current limited criminal history obtained from the Indiana state police central repository, as prescribed in 460 IAC 1.2-15-2(b)(2), for each employee or agent involved in the direct management, administration, or provision of services before providing direct care to individuals receiving services.
(4) Obtain and submit a current document from the nurse aide registry of the Indiana state department of health verifying that each unlicensed employee or agent involved in the direct provision of services has no finding entered into the registry, if applicable, before providing direct care to individuals receiving services.
(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 1.2-6-2)

460 IAC 1.2-6-3 General requirements for direct care staff
Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-10.5-2-2; P.L.37-2005, SECTION 6
Affected: IC 12-10-1; IC 12-10-10

Sec. 3. As follows, staff providing direct care for HCBS providers must:
(1) Be at least eighteen (18) years of age.
(2) Be competent to provide services according to the individual's plan of care.
(3) Demonstrate the ability to effectively communicate.
(4) Submit a copy of a current negative TB test or negative chest x-ray that is completed annually.
(5) Possess a current, valid state-issued driver's license if the employee will be transporting an individual.
(6) Provide proof of current insurance on the vehicle used to transport an individual that meets current Indiana requirements.
(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 1.2-6-3)

460 IAC 1.2-6-4 Monitoring; corrective action
Authority: IC 12-8-4-4; IC 12-9-2-3; IC 12-10.5-2-2; P.L.37-2005, SECTION 6
Affected: IC 12-10-1; IC 12-10-10

Sec. 4. (a) DDARS shall monitor compliance with the requirements of this article as follows:
(1) As stated in the current executed contract or provider agreement.
(2) Upon receiving a complaint or report alleging a provider's noncompliance with the requirements of this article.
(3) As frequently as deemed necessary by DDARS.
(4) According to DDARS approved policy.

(b) DDARS shall monitor compliance with the requirements of this article through any of the following means:
(1) Requesting and obtaining information from the provider.
(2) On-site inspections.
(3) Meeting with an individual or the individual's legal representative as applicable.
(4) Reviewing provider records and the records of an individual.
(5) Follow-up inspections completed, as frequently as deemed necessary by the director of DDARS, to determine compliance after DDARS has required a corrective action plan.

(c) The provider will submit to DDARS any requested documentation within ten (10) days from the date that the provider receives the report of findings unless otherwise specified.

(d) As follows, after an on-site inspection, DDARS shall issue a written report, which shall:
(1) Be prepared by DDARS.
(2) Document the findings made during monitoring.
(3) Identify necessary corrective action.
(4) Give the provider ten (10) days in which to complete the corrective action plan unless otherwise specified.
(5) Identify documentation needed from the provider to support the provider's completion of the corrective action plan.
(6) Be submitted to the provider.

(e) A provider shall do the following:
(1) If requested, complete a corrective action plan to the reasonable satisfaction of DDARS within:
(A) the time period identified in the corrective action plan; or
(B) another time period agreed upon by DDARS.
(2) Notify DDARS upon the completion of a corrective action plan.
(3) Provide DDARS with all requested documentation.

(f) If a person other than an individual receiving service files a complaint, DDARS shall notify the person filing the complaint of completion of the following:
(1) DDARS monitoring as a result of the complaint.
(2) Any corrective action by the provider as a result of DDARS monitoring.
(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 1.2-6-4)

460 IAC 1.2-6-5 Effect of noncompliance; notice
Authority: IC 12-8-4-4; IC 12-9-2-3; IC 12-10.5-2-2; P.L.37-2005, SECTION 6
Affected: IC 12-10-1; IC 12-10-10

Sec. 5. (a) If a provider does not comply with the requirements of this article or does not submit and complete an acceptable, approved corrective action plan to the reasonable satisfaction of DDARS within the time specified, DDARS shall not authorize either or both of the following:
(1) The continuation of services to an individual or individuals by the provider, if the services do not comply with this article.
(2) The receipt of services by individuals not already receiving services from the provider at the time the determination is made that the provider did not implement a corrective action plan to the reasonable satisfaction of DDARS.

(b) DDARS shall give written notice of DDARS' action under subsection (a) to the following:

(1) The provider.
(2) The individual receiving services from the provider.
(3) The individual's legal representative, if applicable.

(c) The written notice under subsection (b) shall include the following:
(1) The requirements of this article with which the provider has not complied.
(2) The effective date, with at least thirty (30) days notice, of DDARS' action under subsection (a).
(3) The need for planning to obtain services that comply with this article for an individual or individuals.
(4) The provider's right to seek administrative review of DDARS' action.
(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 1.2-6-5)

460 IAC 1.2-6-6 Endangerment of an individual's health and welfare
Authority: IC 12-8-4-4; IC 12-9-2-3; IC 12-10.5-2-2; P.L.37-2005, SECTION 6
Affected: IC 4-21.5; IC 12-10-1; IC 12-10-10

Sec. 6. (a) If a provider's noncompliance with this article endangers the health or welfare of an individual such that an emergency exists, as determined by DDARS or its designee, DDARS may enter an order for any of the following:
(1) Termination of continued authorization for the provider to:
(A) serve any individual whose health or safety is being seriously endangered; or
(B) provide any services under this article.
(2) Denial of authorization for the receipt of services by individuals not already receiving services from the provider at the time DDARS determines that a provider's noncompliance with this article endangers the health or safety of an individual.

(b) Any action taken under subsection (a) shall remain in effect until such time DDARS determines the provider's noncompliance with this article is no longer endangering the health or safety of an individual.

(c) DDARS shall give written notice of an order under subsection (a) to the following:
(1) The provider.
(2) The individual receiving services from the provider.
(3) The individual's legal representative, as applicable.

(d) The written notice under subsection (a) shall include the following:
(1) The requirements of this article with which the provider has not complied.
(2) A brief statement of the facts and the law leading to DDARS' determination that an emergency exists.
(3) The need to immediately obtain services that comply with this article for an individual or individuals.
(4) The provider's right to seek administrative review of DDARS' action.

(e) The order issued under subsection (a) shall expire on the earlier of the following:
(1) The date DDARS determines that an emergency no longer exists.
(2) Ninety (90) days.

(f) During the pendency of any related proceedings under IC 4-21.5, DDARS may renew an emergency order for successive ninety (90) day periods.

(g) When an individual is:
(1) scheduled to receive a prescribed service; and
(2) not at the prescribed location;
the provider shall make a reasonable effort to locate the individual. If unable to locate individual, the provider shall complete the unusual occurrence reports according to DDARS policy and this article. *(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 1.2-6-6)*

460 IAC 1.2-6-7 Revocation of approval
Authority: IC 12-8-4-4; IC 12-9-2-3; IC 12-10.5-2-2; P.L.37-2005, SECTION 6
Affected: IC 12-10-1; IC 12-10-10

Sec. 7. DDARS may revoke the approval of a provider under this rule for any of the following reasons:
(1) The provider's repeated noncompliance with this article.
(2) The provider's continued noncompliance with this article.
(3) The provider's noncompliance with this article that endangers the health or welfare of an individual.
(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 1.2-6-7)

Rule 7. Appeals

460 IAC 1.2-7-1 Appeals
Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-10.5-2-2; P.L.37-2005, SECTION 6
Affected: IC 4-21.5; IC 12-10-1; IC 12-10-10

Sec. 1. (a) If an HCBS provider has an executed contract or provider agreement to provide a service to an individual, the provider has the right to appeal decisions that adversely affect the service provider.

(b) The service provider shall make a written request for an appeal hearing to the secretary within fifteen (15) days of the date of an adverse decision.

(c) The request must:
(1) include a statement indicating with reasonable particularity the issue the service provider wishes to be reviewed; and
(2) be signed and dated by the service provider.

(d) Appeal proceedings will be conducted by a family and social services administration-appointed administrative law judge (ALJ) under IC 4-21.5. Notice of the ALJ's decision shall be sent also to any listed adversely affected party. *(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 1.2-7-1)*

Rule 8. Protecting Individuals

460 IAC 1.2-8-1 Procedures for protecting individuals
Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-10.5-2-2; P.L.37-2005, SECTION 6
Affected: IC 12-10-1; IC 12-10-10; IC 12-10-11.5

Sec. 1. (a) The individual's approved provider of CMS shall inform the individual at regular intervals, as specified by the individual's care plan, of the individual's right to refuse treatment.

(b) Each provider of services shall establish a written procedure providing for:
(1) administrative action against;
(2) investigating an alleged violation by;
(3) disciplinary action against; and
(4) dismissal of;
an employee or agent of the provider, if the employee or agent is involved in the alleged, suspected, or actual abuse, neglect, exploitation, or mistreatment of an individual or a violation of an individual's rights.

(c) Each provider of services shall establish a written procedure for employees or agents of the provider to report violations of the provider's policies and procedures to the provider.

(d) Each provider of services shall establish a written procedure for the provider or for an employee or agent of the provider for informing:
(1) APS or CPS as applicable;
(2) an individual's legal representative, if applicable;
(3) the appropriate ombudsman;
(4) any person designated by the individual; and
(5) the provider of CMS to the individual;
of a situation involving the alleged, suspected, or proven abuse, neglect, exploitation, or mistreatment of an individual or the violation of an individual's rights.

(e) Each provider will inform individuals of their right to exercise any or all guaranteed rights without:
(1) restraint;
(2) interference;
(3) coercion;
(4) discrimination; or
(5) threat of reprisal;
by the provider, employee, or agent.

(f) Each provider of services shall:
(1) establish; and
(2) make available to the individual;
a written protocol for reporting required reportable unusual occurrences to DDARS as required by section 2 of this rule.

(g) Each provider of services shall:
(1) establish; and
(2) make available to the individual receiving services;
a written protocol informing the individual about the right to file a complaint with DDARS and the process of filing a complaint with DDARS. *(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 1.2-8-1)*

460 IAC 1.2-8-2 Unusual occurrence; reporting
Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-10.5-2-2; P.L.37-2005, SECTION 6
Affected: IC 12-10-1; IC 12-10-10

Sec. 2. (a) Incidents falling in the category of unusual occurrences, as defined in subsection (b), shall be reported to the following:
(1) DDARS within the approved, specified time frame on the prescribed incident reporting format approved by DDARS.
(2) As applicable, APS or CPS.

(b) Reportable unusual occurrences include, but are not limited to, the following, as applicable:
(1) Alleged, suspected, or actual abuse, neglect, or exploitation of an individual. The provider shall do the following:
(A) Suspend staff involved in the incident pending provider investigation.
(B) Report the unusual occurrence to the applicable APS or CPS office.
(2) Alleged, suspected, or actual assault or abuse by an individual.
(3) The death of an individual, which also must be reported to the appropriate local APS or CPS unit. The narrative shall include the following:
(A) The name of the person contacted.
(B) The phone number of the contact.
(C) The county of the contact.
(4) A residence that compromises the health and safety of an individual due to any of the following:
(A) A significant interruption of a major utility.
(B) An environmental, structural, or other significant problem.
(5) Environmental or structural problems associated with a dwelling where individuals reside that compromise the health and safety of the individuals.
(6) A residential fire resulting in any of the following:
(A) Relocation.
(B) Personal injury.
(C) Property loss.
(7) Suspected or observed criminal activity by:
(A) a staff member, employee, or agent of a provider;
(B) a family member of an individual receiving services; or
(C) the individual receiving services;
when the care of the individual is impacted or potentially impacted.
(8) Injuries of unknown origin.
(9) Suicidal ideation or a suicide attempt that had the potential to cause physical harm, injury, or death.
(10) A major disturbance or threat to public safety created in the community by the individual. The threat:

(A) can be:
(i) toward anyone, including staff; and
(ii) in an internal setting; and
(B) need not be outside the individual's residence.
(11) Admission of an individual to a nursing facility, excluding respite stays.
(12) A significant injury to an individual, including, but not limited to, the following:
(A) A fracture.
(B) A burn greater than first degree.
(C) Choking that requires intervention.
(D) Contusions or lacerations.
(13) An injury that occurs while an individual is restrained.
(14) Police involvement when there is an arrest.
(15) A missing person.
(16) Inadequate staff support for an individual, including inadequate supervision, with the potential for endangering the health or welfare of the individual.

(c) An incident described in subsection (b) shall be reported by a provider or an employee or agency of a provider who:
(1) is providing services to the individual at the time of the incident; or
(2) becomes aware of or receives information about an alleged incident.

(d) An initial report regarding an incident shall be submitted according to DDARS policy and this article upon:
(1) the occurrence of the incident; or
(2) the reporter's:
(A) becoming aware of; or
(B) receiving information about;
an incident.

(e) The provider of CMS or, in the event there is no case manager, the provider to an individual shall submit a follow-up report concerning the incident on the prescribed follow-up incident reporting format at the following times:
(1) Within seven (7) days of the date of the initial report.
(2) Every seven (7) days thereafter until the incident is deemed resolved by DDARS.

(f) All information required to be submitted to DDARS must also be submitted to the following:
(1) The individual or the individual's legal guardian.
(2) The provider of CMS.
(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 1.2-8-2)

460 IAC 1.2-8-3 Transfer of individual's records upon change of provider
Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-10.5-2-2; P.L.37-2005, SECTION 6
Affected: IC 12-10-1; IC 12-10-10

Sec. 3. If an individual changes providers for a home and community based service, the original provider shall transfer copies of all records related to the individual to the new provider:
(1) within five (5) calendar days; and
(2) in compliance with HIPAA regulations.
(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 1.2-8-3)

460 IAC 1.2-8-4 Notice of termination of services
Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-10.5-2-2; P.L.37-2005, SECTION 6
Affected: IC 12-10-1; IC 12-10-10

Sec. 4. (a) Pursuant to the executed provider agreement, a service provider shall furnish at least thirty (30) days written notice to:
(1) the individual;
(2) the legal representative, if applicable;

(3) the case manager, as applicable; and
(4) the Medicaid waiver specialist;
before terminating waiver services to an individual.

(b) If the provider is furnishing direct services, before termination, the provider shall participate in an interdisciplinary meeting to coordinate the transfer of services to a new provider. The provider shall agree to continue serving the individual until a new provider furnishing similar services is in place, unless written permission has been received from the state's Medicaid waiver specialist authorizing the services to cease.

(c) If the provider is furnishing CMS, the provider shall participate in an interdisciplinary meeting at which the new case manager is present. The purpose of the interdisciplinary meeting will be to coordinate the transfer of services to the new case manager. The provider shall agree to continue serving the individual until a new case manager is furnishing service, unless written permission has been received from the state's Medicaid waiver specialist authorizing the services to cease. *(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 1.2-8-4)*

Rule 9. General Administrative Requirements for Providers

460 IAC 1.2-9-1 Provider organizational chart
Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-10.5-2-2; P.L.37-2005, SECTION 6
Affected: IC 12-10-1; IC 12-10-10

Sec. 1. A provider shall do the following:
(1) Maintain a current organizational chart, including the following:
(A) Parent organizations.
(B) Subsidiary organizations.
(2) Make it available upon request.
(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 1.2-9-1)

460 IAC 1.2-9-2 Collaboration and quality control
Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-10.5-2-2; P.L.37-2005, SECTION 6
Affected: IC 12-10-1; IC 12-10-10

Sec. 2. (a) The case management provider for an individual shall collaborate with the individual's other service providers to coordinate services to the individual consistent with the individual's care plan.

(b) If an individual dies, a provider:
(1) shall file an incident report following DDARS guidelines;
(2) must cooperate with the:
(A) provider of CMS; and
(B) appropriate APS or CPS units responsible for conducting an investigation into the individual's death; and
(3) shall submit copies of required records to the mortality review analyst within thirty (30) days.
(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 1.2-9-2)

460 IAC 1.2-9-3 Resolution of disputes
Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-10.5-2-2; P.L.37-2005, SECTION 6
Affected: IC 4-21.5; IC 12-11-1.1; IC 12-11-2.1

Sec. 3. (a) If a dispute arises between or among providers, the dispute resolution process set out in this section shall be implemented.

(b) The resolution of a dispute shall be designed to address an individual's needs.

(c) The parties to the dispute and the individual shall attempt to resolve the dispute informally through an exchange of information and possible resolution.

(d) If these parties are not able to resolve the dispute within fifteen (15) calendar days:
(1) each party must document, in writing:
(A) the issues in the dispute;
(B) their positions; and
(C) their efforts to resolve the dispute; and
(2) the parties shall refer the dispute to DDARS or its designee for resolution in coordinating the recipient's needs.

(e) The parties shall abide by the decision.

(f) A party adversely affected or aggrieved by DDARS' decision may request an administrative review of the decision under 460 IAC 1.2-7-1 within fifteen (15) calendar days after the party receives written notice of the recommendation.

(g) Administrative review proceedings shall be conducted under IC 4-21.5. *(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 1.2-9-3)*

460 IAC 1.2-9-4 Data collection and reporting standards
Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-10.5-2-2; P.L.37-2005, SECTION 6
Affected: IC 12-10-1; IC 12-10-10

Sec. 4. A provider or its agent shall do the following:
(1) Utilize the state-approved data collection system.
(2) Adhere to its set requirements.
(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 1.2-9-4)

460 IAC 1.2-9-5 Quality assurance and quality improvement system
Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-10.5-2-2; P.L.37-2005, SECTION 6
Affected: IC 12-10-1; IC 12-10-10

Sec. 5. (a) A provider or its agent shall have a written internal quality assurance and quality improvement system that is as follows:
(1) Focused on the individual.
(2) Appropriate for the services being provided.
(3) Ongoing and updated at least annually.

(b) The system described in subsection (a) shall include at least the following elements:
(1) An annual survey of individual satisfaction, in accordance with contract guidelines.
(2) Records of findings for annual individual satisfaction surveys.
(3) Documentation of efforts to improve service delivery in response to the surveys of individual satisfaction.
(4) An annual assessment of the appropriateness and effectiveness of each service provided to an individual.
(5) A written process for the following, if applicable:
(A) Analyzing data concerning the following:
(i) Reportable incidents.
(ii) Services provided.
(B) Developing and reviewing recommendations to reduce the risk of future incidents.
(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 1.2-9-5)

460 IAC 1.2-9-6 Prohibition against office in residence of individual
Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-10.5-2-2; P.L.37-2005, SECTION 6
Affected: IC 12-10-1; IC 12-10-10

Sec. 6. In the instance where residency is a service, a provider shall not do either of the following:
(1) Maintain an office in an individual's residence from which the individual is excluded from:
(A) entering; or
(B) using equipment contained in the office.
(2) Conduct the provider's business operations that are not related to services to the individual in the individual's residence.

(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 1.2-9-6)

Rule 10. Financial Information

460 IAC 1.2-10-1 Disclosure of financial information
Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-10.5-2-2; P.L.37-2005, SECTION 6
Affected: IC 5-11-1; IC 12-10-1; IC 12-10-10

Sec. 1. (a) A provider or its agent shall do the following:
(1) Maintain financial records in accordance with generally accepted accounting and bookkeeping practices.
(2) Be audited as follows:
(A) Under the direction of the provider agreement or contract.
(B) According to state board of accounts requirements and procedures for the services contracted.

(b) A provider will, upon request, provide to DDARS copies of audit findings. *(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 1.2-10-1)*

Rule 11. Insurance

460 IAC 1.2-11-1 Property and personal liability insurance
Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-10.5-2-2; P.L.37-2005, SECTION 6
Affected: IC 12-10-1; IC 12-10-10

Sec. 1. A provider shall secure insurance to cover at least:
(1) personal injury;
(2) loss of life; and
(3) property damage;
to an individual caused by fire, accident, or other casualty arising from the provision of services to the individual by the provider. *(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 1.2-11-1)*

Rule 12. Transportation of an Individual

460 IAC 1.2-12-1 Transportation of an individual
Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-10.5-2-2; P.L.37-2005, SECTION 6
Affected: IC 12-10-1; IC 12-10-10

Sec. 1. An approved provider of transportation services or its agent shall do the following:
(1) Maintain the vehicle or vehicles used in the provision of transportation services in good repair.
(2) Retain and make available upon request, records of regular and appropriate maintenance.
(3) Assure the vehicle used for transportation services is properly registered:
(A) with the Indiana bureau of motor vehicles; or
(B) in the state in which the owner of the vehicle resides.
(4) Retain and make available upon request, documentation confirming the provider has the appropriate insurance as required under Indiana law.
(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 1.2-12-1)

Rule 13. Professional Qualifications and Requirements

460 IAC 1.2-13-1 Documentation of qualifications
Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-10.5-2-2; P.L.37-2005, SECTION 6
Affected: IC 12-10-1; IC 12-10-10

Sec. 1. A provider or its agent shall maintain documentation that the provider meets and maintains the requirements for providing services under this article. *(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 1.2-13-1)*

Rule 14. Personnel Records

460 IAC 1.2-14-1 Maintenance of personnel files
Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-10.5-2-2; P.L.37-2005, SECTION 6
Affected: IC 12-10-1; IC 12-10-10

Sec. 1. (a) A provider shall maintain, in the provider's office, files for each employee or agent of the provider.

(b) The files for each employee or agent who provides direct care shall contain the following:
(1) An annual negative:
(A) tuberculin skin test; or
(B) chest x-ray;
before providing services, updated in accordance with recommendations of the Centers for Disease Control.
(2) Copies of the current, valid state-issued driver's license and automobile insurance information, updated when the insurance is paid, if the employee or agent will be transporting an individual.
(3) Limited criminal history information that meets the requirements of 460 IAC 1.2-6-2(3).
(4) Current CPR certification updated in accordance with one (1) of the following:
(A) The American Heart Association.
(B) The American Red Cross.
(C) Another entity approved by DDARS.
(5) Verification of each training session attended by the employee or agent, including substantiation of the following:
(A) The content.
(B) The length of the training session.
(C) Identification of the trainers.
(D) Dated signatures of the trainers and the employee.

(c) The files for each employee or agent who does not provide direct care shall contain the following:
(1) Limited criminal history information that meets the requirements of 460 IAC 1.2-6-2(3).
(2) Professional licensure, certification, or registration, including renewals, as applicable.
(3) Verification of each training session attended by the employee or agent, including substantiation of the following:
(A) The content.
(B) The length of the training session.
(C) Identification of the trainers.
(D) Dated signatures of the trainers and the employee.
(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 1.2-14-1)

Rule 15. Personnel Policies and Manuals

460 IAC 1.2-15-1 Applicability
Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-10.5-2-2; P.L.37-2005, SECTION 6
Affected: IC 12-10-1; IC 12-10-10

Sec. 1. This rule applies to a provider who uses employees or agents to provide services. *(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 1.2-15-1)*

460 IAC 1.2-15-2 Adoption of personnel policies
Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-10.5-2-2; P.L.37-2005, SECTION 6
Affected: IC 12-10-1; IC 12-10-10; IC 16-27-2-5; IC 35-42-1; IC 35-42-2-1; IC 35-42-4; IC 35-43-4; IC 35-46-1-12; IC 35-46-1-13

Sec. 2. (a) A provider or its agent shall do the following:
(1) Adopt, maintain, and follow a written personnel policy.
(2) Review the personnel policies at least annually and update as needed.
(3) Provide to each employee or agent access to the personnel policy.
(4) Adopt and maintain a job description for each position, including the following:

(A) Minimum qualifications for the position.
(B) Major duties required of the position.

(b) The written personnel policy required by subsection (a) shall include, but is not limited to, the following:
(1) A procedure for conducting reference, employment, and criminal background checks on each prospective employee or agent.
(2) A prohibition against employing or contracting with a person convicted of crimes including, but not limited to, the following:
(A) A sex crime (IC 35-42-4).
(B) Exploitation of an endangered adult (IC 35-46-1-12).
(C) Abuse or neglect of a child (IC 35-42-2-1).
(D) Failure to report battery, neglect, or exploitation of an endangered adult or dependent (IC 35-46-1-13).
(E) Theft (IC 35-43-4), except as provided in IC 16-27-2-5(a)(5).
(F) Murder (IC 35-42-1-1).
(G)Voluntary manslaughter (IC 35-42-1-3).
(H) Involuntary manslaughter (IC 35-42-1-4).
(I) Battery (IC 35-42-2).
(3) A process for evaluating the job performance of each employee or agent at the end of the training period and annually thereafter, including a process for feedback from individuals receiving services from the employee or agent.
(4) Disciplinary procedures.
(5) A description of grounds for disciplinary action against or dismissal of an employee or agent.
(6) A clear description of an employee's rights and responsibilities, including the responsibilities of administrators and supervisors.
(7) A procedure to ensure compliance with HIPAA regulations.
(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 1.2-15-2)

460 IAC 1.2-15-3 Operations manual
Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-10.5-2-2; P.L.37-2005, SECTION 6
Affected: IC 12-10-1; IC 12-10-10

Sec. 3. (a) A provider or its agent shall:
(1) ensure compliance with; and
(2) compile written policies and procedures required by sections 1 and 2 of this rule into;
a written operations manual.

(b) The operations manual shall be regularly updated and revised not less often than annually.

(c) Upon the request of DDARS or its designee, the provider shall do either of the following:
(1) Supply a copy of the operations manual to DDARS or another state agency at no cost. DDARS will maintain the confidentiality of proprietary information, as deemed appropriate.
(2) Make the operations manual available to DDARS or another state agency for inspection at the offices of the provider.
(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 1.2-15-3)

Rule 16. Maintenance of Records of Services Provided

460 IAC 1.2-16-1 Maintenance of records of services provided
Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-10.5-2-2; P.L.37-2005, SECTION 6
Affected: IC 12-10-1; IC 12-10-10

Sec. 1. (a) A provider or its agent shall maintain, in the provider's office, documentation of all services provided to an individual.

(b) Documentation related to an individual and required by this article shall be maintained by the provider per HIPAA guidelines following discharge of the individual or as specified in law or rule.

(c) A provider or its agent shall analyze and maintain the documentation required by the following:
(1) The standards under this article applicable to the services the provider is providing to an individual.
(2) The professional standards applicable to the provider's profession.
(3) The individual's plan of care.
(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 1.2-16-1)

460 IAC 1.2-16-2 Individual's personal file; site of service delivery
Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-10.5-2-2; P.L.37-2005, SECTION 6
Affected: IC 12-10-1; IC 12-10-10

Sec. 2. (a) A provider specified in the individual's plan of care as being responsible for maintaining the individual's personal file shall maintain a personal file for the individual at one (1) of the following:
(1) The individual's residence.
(2) The primary location where the individual receives services.
(3) The offices of the specified provider.

(b) The provider shall have a system in place for the transfer of information to and from each provider listed on the individual's care plan. *(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 1.2-16-2)*

Rule 17. Case Management

460 IAC 1.2-17-1 Information concerning an individual
Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-10.5-2-2; P.L.37-2005, SECTION 6
Affected: IC 12-10-1; IC 12-10-10

Sec. 1. A provider of CMS shall have the following information about an individual receiving CMS:
(1) The needs and wants of an individual, including the following:
(A) Health.
(B) Welfare.
(C) Wishes for self-directed care.
(2) The array of services available to an individual whether the services are available under this article or are otherwise available.
(3) The availability of funding for an individual.
(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 1.2-17-1)

460 IAC 1.2-17-2 Training and orientation
Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-10.5-2-2; P.L.37-2005, SECTION 6
Affected: IC 12-10-1; IC 12-10-10

Sec. 2. (a) To become an approved case manager, the person shall do the following:
(1) Meet all the necessary qualifications.
(2) Attend the required case manager orientation training.

(b) To maintain DDARS approval to provide CMS under this article, a provider shall complete the designated training requirements.

(c) If DDARS or its designee identifies a problem with a case manager's provision of services, training on the topics shall be prescribed by DDARS. *(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 1.2-17-2)*

460 IAC 1.2-17-3 Contact information
Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-10.5-2-2; P.L.37-2005, SECTION 6
Affected: IC 12-10-1; IC 12-10-10

Sec. 3. A provider of CMS shall give the individual or the individual's legal representative, if applicable, clear instructions for contacting the provider, including contact information for nonbusiness hours. *(Division of Disability, Aging, and*

Rehabilitative Services; 460 IAC 1.2-17-3)

460 IAC 1.2-17-4 Distribution of information
Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-10.5-2-2; P.L.37-2005, SECTION 6
Affected: IC 12-10-1; IC 12-10-10

Sec. 4. (a) A provider of CMS shall ensure that:
(1) the individual and their legal representative, if applicable; and
(2) all other providers of services to the individual, regardless of whether the services are provided under this article;
have copies of relevant documentation, including information on individual rights, an individual's plan of care, how to file complaints with DDARS, and requesting appeals concerning issues and disputes relating to the services provided to the individual.

(b) A provider of case management shall submit and receive communication and documentation through DDARS' designated software system within the prescribed time frame. *(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 1.2-17-4)*

460 IAC 1.2-17-5 Availability of providers
Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-10.5-2-2; P.L.37-2005, SECTION 6
Affected: IC 12-10-1; IC 12-10-10

Sec. 5. A provider of CMS shall provide the:
(1) individual; or
(2) individual's legal representative upon request;
with a current list of providers approved under this article, including a complete description of services offered by each provider from a generated pick list. *(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 1.2-17-5)*

460 IAC 1.2-17-6 Plan of care progress
Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-10.5-2-2; P.L.37-2005, SECTION 6
Affected: IC 12-10-1; IC 12-10-10

Sec. 6. (a) A provider of case management shall do the following:
(1) Ascertain and document the:
(A) quality;
(B) timeliness; and
(C) appropriateness;
of the care, services, and products delivered to an individual.
(2) Analyze and update the documentation at least every ninety (90) days, unless otherwise specified.

(b) The documentation required under this section shall include an appropriate assessment of the identified needs in the individual's plan of care.

(c) A provider of CMS shall assess and monitor the services and outcomes established for the individual in the individual's plan of care to ensure the health and welfare of the individual, including, but not limited to, the following:
(1) Providing follow-up on identified problems.
(2) Acting immediately to resolve critical issues and crises in accordance with this article.
(3) If concerns with services or outcomes are identified, addressing the concerns.

(d) A provider of CMS who is attempting to resolve a dispute shall follow the dispute resolution procedure in 460 IAC 1.2-9-3.

(e) A provider of CMS shall specify the amount of contact required with an individual in an approved plan of care. *(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 1.2-17-6)*

460 IAC 1.2-17-7 Documentation of services provided

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-10.5-2-2; P.L.37-2005, SECTION 6
Affected: IC 12-10-1; IC 12-10-10

Sec. 7. (a) A provider of CMS shall maintain documentation of the following:
(1) Contact with the following:
(A) An individual or a representative, or both, as applicable.
(B) An individual's providers.
(2) Any reports required by the state, which may include, but are not limited to:
(A) unusual occurrences; or
(B) issue resolutions.

(b) The documentation shall be updated whenever CMS is provided for the individual. *(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 1.2-17-7)*

460 IAC 1.2-17-8 Conflict of interest
Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-10.5-2-2; P.L.37-2005, SECTION 6
Affected: IC 12-10-1; IC 12-10-10

Sec. 8. If an entity provides CMS, this entity shall not provide another service under this article unless a waiver to do so is received and approved by DDARS. *(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 1.2-17-8)*

Rule 18. Required Warranties

460 IAC 1.2-18-1 Warranty required
Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-10.5-2-2; P.L.37-2005, SECTION 6
Affected: IC 12-10-1; IC 12-10-10

Sec. 1. All applicable services provided to an individual under this rule including, but not limited to:
(1) durable medical equipment;
(2) personal emergency response system;
(3) home modification; and
(4) vehicle modifications;
shall supply a warranty effective for at least one (1) year from the date of new installation or the date the individual received the new item, whichever is applicable. *(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 1.2-18-1)*

Rule 19. Services

460 IAC 1.2-19-1 Coordination of services and plan of care
Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-10.5-2-2; P.L.37-2005, SECTION 6
Affected: IC 12-10-1; IC 12-10-10

Sec. 1. (a) As follows, the case manager shall create a plan of care for the individual that shall:
(1) Consist of a formal description of goals, objectives, and strategies, including the following:
(A) Desired outcomes.
(B) Persons responsible for implementation.
(2) Be designed to enhance independence.

(b) The provider shall assess the appropriateness of an individual's goals at least once every ninety (90) days as described in 460 IAC 1.2-17-6.

(c) All entities responsible for providing service to an individual shall do the following:
(1) Coordinate the services provided to an individual.
(2) Share documentation regarding the individual's well-being, as required by the individual's care plan.
(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 1.2-19-1)

Rule 20. Residential Day Service

460 IAC 1.2-20-1 Safety and security policies and procedures
Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-10.5-2-2; P.L.37-2005, SECTION 6
Affected: IC 12-10-1; IC 12-10-10

Sec. 1. (a) A provider designated in an individual's plan of care as responsible for providing a residential or day services environment, or both, for the individual shall do the following:
(1) Maintain specific written safety and security policies and procedures for an individual.
(2) Train all employees or agents in implementing the policies and procedures.

(b) The policies and procedures prescribed by subsection (a) shall include at least the following:
(1) When and how to notify:
(A) law enforcement, APS, or CPS, as deemed appropriate; and
(B) emergency response agencies;
in an emergency or crisis.
(2) Scheduling and completion of evacuation drills.
(3) Adopting procedures that shall be followed in an emergency or crisis, such as any of the following:
(A) A tornado.
(B) A fire.
(C) Inclement weather.
(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 1.2-20-1)

460 IAC 1.2-20-2 Emergency telephone numbers
Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-10.5-2-2; P.L.37-2005, SECTION 6
Affected: IC 12-10-1; IC 12-10-10

Sec. 2. (a) A provider designated in an individual's care plan as responsible for providing CMS shall recommend and advise that an emergency telephone number list should be located:
(1) in an area visible from the telephone used by an individual; or
(2) as indicated in the individual's care plan.

(b) The emergency telephone list shall include the following:
(1) Information given to the individual by the individual's provider of CMS.
(2) The local emergency number.
(3) The telephone number of the individual's legal representative or advocate, if applicable.
(4) The telephone numbers specified in the individual's care plan, including, but not limited to, telephone numbers for the following:
(A) The local area agency on aging office.
(B) The provider of CMS to the individual.
(C) APS or CPS, as applicable.
(D) DDARS' designated complaint number.
(E) All other service providers identified in the individual's plan of care.
(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 1.2-20-2)

Rule 21. Code of Ethics

460 IAC 1.2-21-1 Code of ethics
Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-10.5-2-2; P.L.37-2005, SECTION 6
Affected: IC 12-10-1; IC 12-10-10

Sec. 1. All providers or agents providing services under this article shall abide by the code of ethics in this section. A provider shall do the following:
(1) Provide professional services with objectivity and with respect for the unique needs and values of the individual being provided services.

(2) Avoid discrimination on the basis of factors that are irrelevant to the provision of services, including, but not limited to, the following:

(A) Race.

(B) Creed.

(C) Gender.

(D) Age.

(E) Disability.

(3) Provide sufficient objective information to enable an individual or the individual's guardian to make informed decisions.

(4) Accurately present the following:

(A) Professional qualifications and credentials.

(B) Professional qualifications of all employees or agents.

(5) Require all employees or agents to assume responsibility and accountability for personal and professional competence in the following:

(A) The practice of the person's profession.

(B) The provision of services under this article.

(6) Require professional, licensed, or accredited employees or agents to adhere to acceptable standards for the employee's or agent's area of professional practice.

(7) Require employees or agents to comply with all laws and regulations governing a licensed or accredited professional's profession.

(8) Require all employees or agents to do the following:

(A) Maintain the confidentiality of individual information consistent with the standards of this article and all other laws and regulations governing confidentiality of individual information.

(B) Conduct all practice with honesty, integrity, and fairness.

(C) Fulfill professional commitments in good faith.

(D) Inform the public and colleagues of services only by use of factual information.

(9) Refrain from the following:

(A) Advertising or marketing services in a misleading manner.

(B) Engaging in uninvited solicitation of potential clients who are vulnerable to undue influence, manipulation, or coercion.

(10) Make reasonable efforts to avoid bias in any kind of professional evaluation.

(11) Notify the appropriate party, which may include:

(A) DDARS;

(B) the Indiana state department of health;

(C) a licensing authority;

(D) an accrediting agency;

(E) an employer; and

(F) the office of the attorney general, division of consumer protection;

of any unprofessional conduct that may jeopardize an individual's safety or influence the individual or individual's representative in any decision making process. *(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 1.2-21-1)*

Notice of Public Hearing

Under IC 4-22-2-24, notice is hereby given that on March 27, 2006 at 10:00 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 proposed new rules at 460 IAC 1.2 concerning home and community based services, which will include qualifications for approved providers of home and community based services; the process by which providers are approved; the process for monitoring and ensuring compliance with provider standards and requirements; the rights and protection of individuals receiving services; standards and requirements for approved providers of home and community based services; and definitions for home and community based services funded through BAIHS, including the current and future nursing facility level of care Medicaid waivers affected by this article. 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 before the meeting.

Under IC 4-22-2-24(d), the primary purpose of this proposed article is to establish standards and requirements for providers of home and community based services to eligible approved individuals for the safety, health, and welfare of the individuals served and a level of accountability of the providers. The provisions are the result of extensive collaboration between the DDARS and representatives of providers, advocates, regulatory boards, and other interested parties and are considered necessary to carry out

the purposes for which the article is being promulgated. Costs associated with this article should be minimal because the requirements herein are already being practiced to a large extent by providers. Any additional costs are attached to the necessity of the provisions to effectively carry out the purposes of the article.

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.

John M. Davis
General Counsel
Division of Disability, Aging, and Rehabilitative Services