



STATE OF TENNESSEE
DEPARTMENT OF FINANCE AND ADMINISTRATION
DEPARTMENT OF INTELLECTUAL AND DEVELOPMENTAL DISABILITIES
ANDREW JACKSON BUILDING, 15TH FLOOR
500 DEADERICK STREET
NASHVILLE, TN 37243

March 3, 2011

HCBS Providers in the Statewide, Arlington and Self-Determination Waivers for Persons with Intellectual Disabilities:

The purpose of this letter is to advise you of changes in the Statewide, Arlington, and Self-Determination waiver programs for persons with Intellectual Disabilities, and how such changes will be implemented. These changes were set forth in the Department of Intellectual and Developmental Disabilities (DIDD—then, DIDS) budget for Fiscal Year 2011, passed by the Tennessee General Assembly in the Appropriations Bill for FY 2011, and approved by the Centers for Medicare and Medicaid Services (CMS) on February 15, 2011. These changes include new limitations on certain services, the elimination of one service, and the ability for DIDD to become a provider and/or contractor (i.e., an “Organized Health Care Delivery System”) for two services—namely, Dental Services and Specialized Medical Equipment and Supplies and Assistive Technology.

The benefit changes are as follows:

- Nursing Services are limited to a maximum of 48 units (12 hours) per day per waiver participant.
- Personal Assistance services are limited to a maximum of 860 units (215 hours) per waiver participant per month.
- Nutrition Services are limited to a maximum of six (6) visits per waiver participant per waiver program year, of which no more than one (1) visit per waiver program year may be a Nutrition Services assessment.
- Dental Services are limited to a maximum of \$5,000 per service recipient per waiver program year, and a maximum of \$7,500 per service recipient across three (3) consecutive waiver program years.
- Environmental Accessibility Modifications are limited to a maximum of \$15,000 per service recipient per three (3) consecutive waiver program years. In addition, Environmental Accessibility Modifications will be available only for newly enrolled waiver participants, including (but not limited to) persons transitioning to the community from an institutional setting, and existing waiver participants who have recently experienced a significant loss of mobility function.
- Vehicle Modifications are no longer a covered benefit.

The changes will be implemented as follows:

1. The benefit changes apply to all waiver participants without exception.
2. The benefit changes are effective as of the date of CMS approval of the waiver amendments on February 15, 2011, and will be immediately applied to all *new* requests for these services (including increases in existing services). Denials of new requests for services in excess of the new limits (including requests for Vehicle Modifications which are no longer covered) will be accompanied by notice of action, advising the waiver participant that such services are no longer covered under the applicable waiver. Fair hearings will be granted only for valid factual disputes pertaining to these changes, and not for challenges pertaining only to the State's policy decision to implement these changes. Valid factual disputes include such things as whether the State accurately counted the amount of benefits received.
3. This week, a notice was issued by DIDD advising all waiver participants of the new limits, regardless of whether such services are currently approved in their Individual Support Plans (ISPs). A copy of that notice is attached hereto. Please note that receipt of notice is presumed to occur within 5 days of its mail date.
4. As a general rule, authorizations for Vehicle Modifications and for services in excess of the new benefit limits that were approved prior to the date of receipt of the member notice are void. Vehicle Modifications and services in excess of the new benefit limits are no longer covered under the terms of the approved waivers. There are two exceptions.

The first exception is continuation of PA and/or Nursing Services as described below. The second exception is Vehicle Modifications that have already been authorized AND initiated, but not yet completed as of the date of receipt of the member notice. If the modification has been authorized but not yet initiated by that date, the benefit is no longer covered. This exception is not applicable for Environmental Accessibility Modifications since the new benefit limit simply extends the existing limit across an additional year (i.e., 3 calendar years instead of 2). Thus, services in excess of the new limit should not have been approved or initiated in the first place.

5. The Office of Civil Rights has received a complaint regarding certain individuals currently receiving PA services in excess of the new benefit limit. The State has agreed to withhold implementation of the new limit *only* for persons currently receiving PA services in excess of the new limit pending resolution of that complaint. However, the new limits will be immediately applied to all new PA requests, including requests to increase PA services that would result in the new limits being exceeded by additional waiver participants or requests to further increase PA services for persons already receiving services in excess of the new limits.
6. Once the complaint is resolved and the State can proceed, application of the new limits to persons currently receiving PA in excess of the new limits will proceed only after an individualized assessment of whether any changes are needed in the individual's plan of care in order to ensure that his/her needs can continue to be safely met in the waiver. This could result in the provision of assistance by family members or other unpaid caregivers, or the receipt of a different mix of waiver services. Once such determination

has been made and any new services needed are ready to begin, an individualized notice will be issued, advising the person of the effective date that his/her PA services will be reduced. The reduction of PA and transition to any new services needed should be coordinated to occur *at the same time*. Independent Support Coordinators (ISCs) will be responsible for conducting the assessment and for any changes in the ISP, as well as coordinating a seamless transition. Forms will be provided by DIDD that must be completed by ISCs in order to document transition planning efforts and to ensure that all steps of the process are followed.

7. Application of the new limits to persons currently receiving Nursing Services in excess of the new limits will proceed in the same manner as PA (see #5 above), except that transition planning will commence immediately.
8. **Annual benefit limits** – all annual limits are applied across the waiver program year (1/1-12/31). For 2011, new annual limits are effective as of the date of CMS approval, February 15, 2011. Thus, for 2011 only, we will count from February 15 through December 31.
9. **Multi-year benefit limits** – all multi-year limits must be applied across the same program years. All new 3-year limits will be counted beginning with 2011, 2012 and 2013, with the next 3-year period beginning on 1/1/14. This is true regardless of when a person is enrolled into the waiver. Thus, persons who enroll into one of the waivers during the multi-year period have access to the full amount of the benefit limit applicable across the multi-year period.

Because the 3-year limit on Dental Services is new, the first 3-year period will start on February 15, 2011 (the effective date of CMS approval) and run through December 31, 2013. Three-year periods thereafter will begin on January 1 of the first year and run through December 31 of the 3rd year.

This is not the case for Environmental Accessibility Modifications, since the benefit limit was already in place and has only been extended across an additional year (3 calendar years instead of 2).

If you have any questions regarding these new benefits or how such limits will be applied, please contact Linda Sharer at 615-741-6157.

Sincerely,



Debra K. Payne, DIDD Acting Commissioner