

TITLE 460 DIVISION OF DISABILITY, AGING, AND REHABILITATIVE SERVICES

NOTE: Under IC 4-28-2-1, the name of the Department of Human Services is changed to Division of Aging and Rehabilitative Services, effective January 1, 1992.

NOTE: Under P.L.4-1993, SECTION 31 and P.L.5-1993, SECTION 44, the name of the Division of Aging and Rehabilitative Services is changed to Division of Disability, Aging, and Rehabilitative Services, effective July 1, 1993.

ARTICLE 1. AGING

Rule 1. Nursing Home Prescreening

460 IAC 1-1-1 Purpose

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

Affected: IC 12-10-12-33; IC 12-10-12-34; IC 12-15

Sec. 1. The purpose of the health facility preadmission screening program is to determine whether there are community services available for individuals who need assistance with the tasks of daily living that would be more appropriate than care in a health facility and, if so, to deny permission to enter a health facility unless the individual is willing to forego eligibility for certain Medicaid reimbursement for a period of time beginning from the date of admission as specified in IC 12-10-12-33 and IC 12-10-12-34. (*Division of Disability, Aging, and Rehabilitative Services; 460 IAC 1-1-1; filed Jul 25, 1985, 3:39 p.m.: 8 IR 1984; filed Aug 7, 1995, 10:00 a.m.: 18 IR 3383; readopted filed Nov 14, 2001, 4:45 p.m.: 25 IR 1270*) *NOTE: Transferred from the department on aging and community services (450 IAC 1-1-1) to the division of aging and rehabilitative services (460 IAC 1-1-1) by P.L.41-1987, SECTION 23, effective July 1, 1987.*

460 IAC 1-1-2 Definitions

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

Affected: IC 12-8-6-1; IC 12-10-1-1; IC 12-10-1-4; IC 12-10-12; IC 12-14; IC 12-15-2; IC 16-28-2

Sec. 2. (a) The definitions in this section apply throughout this rule.

(b) "Applicant" means an individual who has directly, or through a responsible party, made application to participate in the nursing home prescreening program under IC 12-10-12 in order to determine the appropriateness of the individual's placement in a health facility.

(c) "Admission to a health facility" means as soon as an individual is physically present in a health facility unless the admittance is designee-approved. A person approved by a designee is considered admitted twenty-four (24) hours after entering the facility.

(d) "Bureau" refers to the bureau of aging and in-home services established within the division under IC 12-10-1-1.

(e) "DDARS" or "division" refers to the Indiana division of disability, aging, and rehabilitative services.

(f) "Designee" means an individual appointed by the prescreening agency, who may authorize temporary admittance to a health facility, under IC 12-10-12-28 through IC 12-10-12-31.

(g) "Equivalent degree" means a bachelor's degree or a master's degree, which meets the following requirements:

(1) The degree is in the same field of study as those listed in section 10(c)(1) of this rule.

(2) The degree requires courses comparable to the courses required for the degrees listed in section 10(c)(1) of this rule.

(3) The degree has a different title than the degree listed in section 10(c)(1) of this rule.

(h) "Health facility" means a facility licensed by the state department of health under IC 16-28-2, whether Medicare or Medicaid certified or not, that:

(1) provides comprehensive:

(A) nursing care;

(B) room;

(C) food;

(D) laundry;

(E) administration of medications;

(F) special diets; and

(G) treatments; and

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(2) may provide rehabilitative and restorative therapies under the order of an attending physician.

The term, for purposes of this rule, does not include intermediate care facilities for the mentally retarded (ICF/MR) or facilities licensed for residential care.

(i) "Level I: Identification Evaluation Screen" refers to a screening tool designed to ascertain whether an individual has or is suspected of having a condition of mental illness (MI) and/or mental retardation /developmental disability (MR/DD).

(j) "Medicaid or medical assistance" means payment for part or all of the cost of medical or remedial services furnished on behalf of eligible needy individuals as defined in IC 12-15-2.

(k) "Medicaid waiver" refers to specific provisions concerning home and community based services as specified under 42 U.S.C. 1396n, which have been approved by the Secretary of the federal Department of Health and Human Services, for implementation in Indiana.

(l) "Office" means the office of Medicaid policy and planning established under IC 12-8-6-1.

(m) "PAS process" means the process specified in section 4 of this rule.

(n) "PAS team" means the screening team under IC 12-10-12-14.

(o) "Preadmission screening", "prescreening", and "screening program" mean the screening process under IC 12-10-12.

(p) "Prescreening agency" or "PAS agency" means an area agency on aging designated by the bureau under IC 12-10-1-4(18).

(q) "Responsible party" means an individual chosen by an applicant or, if the applicant is a minor or has been adjudicated incompetent, a parent or guardian of an applicant who assists in the process of making application for prescreening under this rule. (*Division of Disability, Aging, and Rehabilitative Services; 460 IAC 1-1-2; filed Jul 25, 1985, 3:39 p.m.: 8 IR 1984; filed Aug 7, 1995, 10:00 a.m.: 18 IR 3386; readopted filed Nov 14, 2001, 4:45 p.m.: 25 IR 1270*) NOTE: Transferred from the department on aging and community services (450 IAC 1-1-2) to the division of aging and rehabilitative services (460 IAC 1-1-2) by P.L.41-1987, SECTION 23, effective July 1, 1987.

460 IAC 1-1-3 Exemption

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

Affected: IC 12-10-12; IC 12-13-5; IC 12-14

Sec. 3. The prescreening program under IC 12-10-12 applies to all persons applying for admission to a health facility, except that all persons admitted to a health facility prior to implementation of this section on April 30, 1983, are exempted from the prescreening requirement as set out in IC 12-10-12. (*Division of Disability, Aging, and Rehabilitative Services; 460 IAC 1-1-3; filed Jul 25, 1985, 3:39 p.m.: 8 IR 1985; filed Aug 7, 1995, 10:00 a.m.: 18 IR 3387; readopted filed Nov 14, 2001, 4:45 p.m.: 25 IR 1271*) NOTE: Transferred from the department on aging and community services (450 IAC 1-1-3) to the division of aging and rehabilitative services (460 IAC 1-1-3) by P.L.41-1987, SECTION 23, effective July 1, 1987.

460 IAC 1-1-4 PAS process

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

Affected: IC 12-10-12; IC 12-13-5; IC 12-14

Sec. 4. (a) The PAS process shall be completed for each individual who has agreed to participate in the PAS program.

(b) The PAS process shall consist of the following:

(1) A complete PAS assessment, including the following:

(A) The applicant's medical condition and related service needs.

(B) The applicant's psychosocial status and related service needs.

(C) The applicant's degree of functional impairment and related service needs.

(D) The availability of community services (formal and informal) that are sufficient and appropriate to meet the identified service needs outside of, as opposed to within, a health facility.

(2) A screening team recommendation, based upon the complete assessment, as to the appropriateness of health facility placement.

(3) A final determination by the office, based upon the screening team recommendation, as to the appropriateness of health facility placement.

(c) The PAS process must be completed prior to admission to a health facility, within twenty-five (25) days from the effective

date of the PAS application, except in situations involving designee authorization for temporary admission to a health facility. However, for a nonresident, the PAS process must be completed and the findings reported within ten (10) days. (*Division of Disability, Aging, and Rehabilitative Services; 460 IAC 1-1-4; filed Jul 25, 1985, 3:39 p.m.: 8 IR 1985; filed Aug 7, 1995, 10:00 a.m.: 18 IR 3387; readopted filed Nov 14, 2001, 4:45 p.m.: 25 IR 1271*) NOTE: Transferred from the department on aging and community services (450 IAC 1-1-4) to the division of aging and rehabilitative services (460 IAC 1-1-4) by P.L.41-1987, SECTION 23, effective July 1, 1987.

460 IAC 1-1-5 Application

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

Affected: IC 12-10-12-7; IC 12-10-12-27.1; IC 16-28-2

Sec. 5. (a) The individual requesting care in a health facility or the individual's responsible party shall fill out and sign an application for the prescreening program prior to admission to a health facility under IC 12-10-12-7. The application is considered to be completed when it is filled out, signed, and given to a representative of a health facility, the designee, or a member of the prescreening team.

(b) The applicant shall, as part of the application process, state the name, address, and telephone number of the physician that he or she requests to serve on the screening team.

(c) The effective date of the application for prescreening is the date on which the prescribed form is signed by the applicant.

(d) A person in a residential living arrangement who is at risk of institutionalization or who could benefit from home-based care may make a request to the PAS agency in the county in which the applicant resides under IC 12-10-12 prior to application for admission to a health facility to determine if home-based services are available and appropriate. The application will be made to the prescreening agency serving the area in which the applicant resides.

(e) An individual who is a resident of a health facility may request to be screened, as part of a discharge planning process, to determine what services are available to help the individual live outside of the health facility. The application will be made to the prescreening agency serving the area in which the health facility is located.

(f) Requirements for a person residing in another state requesting admission to a health facility in Indiana shall be as follows:

(1) The person must participate in the prescreening program under IC 12-10-12-27.1.

(2) An application for the prescreening program by a person residing in another state shall be made to the prescreening agency serving the county in which the health facility is located, and the availability of community services shall be based on services available in the area in which the health facility is located. Determination is to be rendered within ten (10) days of receipt of the required documents.

(g) The screening under IC 12-10-12 shall not be required:

(1) for a person admitted to a health facility following direct discharge from another health facility licensed under IC 16-28-2;

(2) for a person readmitted to a health facility from a hospital after discharge directly from a health facility to the hospital, if his or her placement in a health facility was found to be appropriate under IC 12-10-12 or if he or she was admitted to a health facility prior to April 30, 1983;

(3) for transfer from one (1) nursing facility level of services to another nursing facility level of services in the same health facility or in another health facility;

(4) for a person admitted to an intermediate care facility for the mentally retarded or a facility licensed for residential care;

or

(5) for an individual who transfers from a continuing care retirement community bed to the bed of a comprehensive care facility licensed under IC 16-28-2 that serves only residents of that retirement community for a recuperative stay not to exceed five (5) days, but if the individual remains longer than five (5) days, the individual must apply for screening no later than the fifth day.

(h) Authorization for admission under IC 12-10-12-31 may be granted by the designee when a medical emergency exists in that care in the health facility is required within seventy-two (72) hours of the request for admission and the attending physician certifies the need for emergency admission to the prescreening agency following the procedures established by the division. An emergency admission shall only be granted for admission from a noninstitutional living arrangement or an emergency room of an in-state hospital.

(i) For individuals who have undergone the screening process and have been determined to be ineligible for placement in a

health facility, that individual shall not apply for participation in further screening for a minimum of one (1) year unless the medical condition or the support system of the individual is significantly changed to the degree that the attending physician believes a new screening process is medically necessary. The attending physician may certify the need for such additional screening to the prescreening agency. The screening team will make the final decision on the need for another screening based on the attending physician's certification. The screening shall be conducted in accordance with IC 12-10-12. The effective date of the application for additional screening shall be the date of the screening team's final decision on the need for another screening.

(j) For persons not admitted to a health facility, the determination under IC 12-10-12-20 that placement in a health facility is appropriate shall be valid for a period not to exceed ninety (90) days from the date of issuance by the office. If the person has not been admitted to a health facility ninety (90) days after the issuance of the determination, the individual must apply for PAS screening again, and must have a physician's certification of the need for additional screening.

(k) An individual who was not notified of the requirement for prescreening and who is in a health facility may be prescreened after receiving notification of the requirement. (*Division of Disability, Aging, and Rehabilitative Services; 460 IAC 1-1-5; filed Jul 25, 1985, 3:39 p.m.: 8 IR 1985; filed Aug 7, 1995, 10:00 a.m.: 18 IR 3388; readopted filed Nov 14, 2001, 4:45 p.m.: 25 IR 1272*) NOTE: Transferred from the department on aging and community services (450 IAC 1-1-5) to the division of aging and rehabilitative services (460 IAC 1-1-5) by P.L.41-1987, SECTION 23, effective July 1, 1987.

460 IAC 1-1-6 Agency cooperation

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

Affected: IC 12-10-12; IC 12-13-5; IC 12-14

Sec. 6. (a) The county offices of family and children, the Indiana division of mental health, the bureau of developmental disabilities, the office, the division, the prescreening agencies, and all health facilities shall cooperate in the operation of the screening program and shall share such information concerning the applicant as requested by each other, except to the extent that the information is otherwise protected under state or federal law.

(b) The division shall prescribe the forms and procedures and establish the policy to be followed in the implementation of the nursing home prescreening program. The appointed area agencies on aging shall be designated by the division as the prescreening agencies to carry out the duties as outlined in this rule. (*Division of Disability, Aging, and Rehabilitative Services; 460 IAC 1-1-6; filed Jul 25, 1985, 3:39 p.m.: 8 IR 1987; filed Aug 7, 1995, 10:00 a.m.: 18 IR 3389; readopted filed Nov 14, 2001, 4:45 p.m.: 25 IR 1273*) NOTE: Transferred from the department on aging and community services (450 IAC 1-1-6) to the division of aging and rehabilitative services (460 IAC 1-1-6) by P.L.41-1987, SECTION 23, effective July 1, 1987.

460 IAC 1-1-7 Prescreening agency; duties

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

Affected: IC 12-10-12; IC 12-13-5; IC 12-14

Sec. 7. The prescreening agency shall do the following:

- (1) Seek cooperation from other public and private agencies in the community which offer services to the disabled and elderly.
- (2) Provide information and education to the general public regarding availability of the screening program.
- (3) Accept prescreening referrals from individuals, families, human service professionals, and health facility personnel.
- (4) Assess health and social needs of referred individuals and identification of services needed to maintain these persons in the least restrictive environment.
- (5) Identify available noninstitutional services to meet the care needs of individuals referred.
- (6) Compute the cost effectiveness of noninstitutional versus health facility services.
- (7) Upon receipt of a completed application, immediately schedule the prescreening activities to be completed within the time designated at IC 12-10-12-28 through IC 12-10-12-31 or within twenty-five (25) days for persons making application under IC 12-10-12-7.
- (8) Determine the composition of the PAS teams provided for under IC 12-10-12-14. The division may require the PAS agency to seek approval of PAS team members from the division.
- (9) Make appointments and fill vacancies on the PAS team and appoint designees under IC 12-10-12-27.
- (10) Appoint to the PAS team at the time of each prescreening, the applicant's physician as required in IC 12-1-12-14(b) [IC

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12-1 was repealed by P.L.2-1992, SECTION 897, effective February 14, 1992.]. In the event that the applicant is unable to specify an attending physician, the prescreening agency may assist to locate a physician who shall be named as a member of the screening team with the approval of the applicant.

(11) Notify each appointee of his or her selection, in writing.

(12) Retain a signed copy of the prescribed notification, application form, and supporting documentation for a period of three (3) years.

(13) Prepare reports as required by the division.

(14) Report to the prosecuting attorney of the county in which the violation occurred the failure of the health facility to notify the individual that he or she must be prescreened prior to admission to the health facility or the failure of the health facility to deliver the signed copy of the notification to the prescreening agency serving the county in which the applicant resides.

(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 1-1-7; filed Jul 25, 1985, 3:39 p.m.: 8 IR 1987; filed Aug 7, 1995, 10:00 a.m.: 18 IR 3389; readopted filed Nov 14, 2001, 4:45 p.m.: 25 IR 1273) NOTE: Transferred from the department on aging and community services (450 IAC 1-1-7) to the division of aging and rehabilitative services (460 IAC 1-1-7) by P.L.41-1987, SECTION 23, effective July 1, 1987.

460 IAC 1-1-8 Health facility; duties

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

Affected: IC 12-10-12; IC 12-13-5; IC 12-14

Sec. 8. (a) When an individual applies to a health facility for admission, the health facility shall notify the applicant:

(1) that he or she must apply to the prescreening agency for participation in the prescreening program;

(2) that the preadmission screening program consists of an assessment of the applicant's need for care in a health facility made by a team of individuals familiar with the needs of persons seeking admission; and

(3) the penalty that the individual will incur under IC 12-10-12-33 and IC 12-10-12-34 if he or she does not comply with the prescreening program.

(b) The notification shall be in writing on forms prescribed by the division and shall contain the information set out in IC 12-10-12-10(a) and IC 12-10-12-10(b).

(c) The applicant must be given one (1) signed copy acknowledging that he or she has received the notice and the date that the notice was received. The health facility that the individual has entered shall keep one (1) signed copy on file for one (1) year from the date of signature or, if the individual is admitted to the health facility, from the date of admission, whichever is later. One (1) signed copy must be forwarded to the prescreening agency within five (5) working days from the date of signature or, if the individual is admitted to the health facility, from the date of admission, whichever is later.

(d) It is the responsibility of the health facility to provide verification that:

(1) the application for prescreening was made prior to admission;

(2) an individual admitted prior to the prescreening determination under IC 12-10-12-20 had designee authorization for admission required under IC 12-10-12-27; and

(3) the copy of the application and other designated documentation were forwarded to the prescreening agency within five (5) working days from the date of designee authorization.

(e) The health facility shall promptly provide to the screening team an estimate of the cost of all services that the individual is anticipated to require in the health facility. The estimate will be at the cost charged to private payors. *(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 1-1-8; filed Jul 25, 1985, 3:39 p.m.: 8 IR 1988; filed Aug 7, 1995, 10:00 a.m.: 18 IR 3390; readopted filed Nov 14, 2001, 4:45 p.m.: 25 IR 1274) NOTE: Transferred from the department on aging and community services (450 IAC 1-1-8) to the division of aging and rehabilitative services (460 IAC 1-1-8) by P.L.41-1987, SECTION 23, effective July 1, 1987.*

460 IAC 1-1-9 Applicant's physician or physician member of PAS team; duties

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

Affected: IC 12-10-12; IC 12-13-5; IC 12-14

Sec. 9. The applicant's physician or physician member of the screening team shall promptly supply all medical information

on the applicant that is necessary to complete the assessment and make the findings required by IC 12-10-12-17 and IC 12-10-12-28 through IC 12-10-12-31. (*Division of Disability, Aging, and Rehabilitative Services; 460 IAC 1-1-9; filed Jul 25, 1985, 3:39 p.m.: 8 IR 1988; filed Aug 7, 1995, 10:00 a.m.: 18 IR 3391; readopted filed Nov 14, 2001, 4:45 p.m.: 25 IR 1274*) NOTE: Transferred from the department on aging and community services (450 IAC 1-1-9) to the division of aging and rehabilitative services (460 IAC 1-1-9) by P.L.41-1987, SECTION 23, effective July 1, 1987.

460 IAC 1-1-10 PAS team; duties

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

Affected: IC 12-10-12-16; IC 12-10-12-18; IC 12-13-5; IC 12-14

Sec. 10. (a) The PAS team shall conduct the preadmission assessment pursuant to the policies and procedures prescribed by the division.

(b) The preadmission assessment shall be conducted by the use of the assessment forms developed or approved by the division and shall include the following elements:

- (1) Client demographic information.
- (2) Present medical condition of client.
- (3) Present psychosocial status of client.
- (4) Assessment of functional capacity of client.
- (5) Present formal or informal services being provided to the client.
- (6) Present unmet needs of client.
- (7) Formal and informal services that are presently available but are not being provided to the client.
- (8) Observations of the PAS team during the on-site visit.
- (9) Persons consulted during the screening process.
- (10) Client's preference for care.
- (11) A preliminary care plan.

(c) Each PAS team member, other than the physician member, shall have one (1) of the following:

- (1) A bachelor's degree in social work, psychology, gerontology, sociology, counseling, nursing, or an equivalent degree.
- (2) A license as a registered nurse or a bachelor's degree in any field and a minimum of two (2) years of direct service experience with the elderly or persons with disabilities, which includes activities such as the following:
 - (A) Assessment.
 - (B) Plan development.
 - (C) Implementation.
 - (D) Monitoring.

A master's degree in a related field may substitute for the required experience.

(d) An individual who meet the educational requirement and a minimum of one (1) year of the required experience may qualify provisionally as a PAS team member. In order for any individual to qualify provisionally as a PAS team member, the PAS agency shall have in place a written plan, approved by the division, outlining the manner in which the individual shall achieve the experience needed to become a PAS team member. The written plan shall include the following:

- (1) A specific proposal of how the remaining amount of the deficient experience will be satisfied within a time period equal to the amount of remaining experience needed, but not to exceed twelve (12) months.
- (2) Arrangements for the provisional PAS team member to meet, at least biweekly, with a supervisor or an individual who meets the qualifications in section 10(c) of this rule, to discuss the provisional PAS team member's care plans.
- (3) A statement asserting that the provisional PAS team member's care plans will be reviewed and approved by the supervisor or an individual who meets the qualifications in section 10(c) of this rule.

Provisional PAS team member certification shall be withdrawn by the division if the terms of the written plan are not met at least twelve (12) months from the date of provisional certification.

(e) Designees shall meet the criteria in subsection (c).

(f) After the assessment is completed, the PAS team shall find whether the placement of the individual in a health facility is appropriate, utilizing the guidelines set forth in section 12(c) and 12(d) of this rule.

(g) The vote of the PAS team shall be conducted at the time and place as set by the member of the screening team who

represents the prescreening agency. The vote may either be made by a signature at the time of individual contact, based on a review of all necessary data, or the vote may be conducted by telephone. The vote of the physician team member will be made by completion of and signature on the prescribed form. The assessment of the appointee of the prescreening agency, together with the assessments of any other team member who desires to comment, shall be submitted to the office for the prescreening determination designated under IC 12-10-12-18. All screening forms, narrative reports, and other pertinent applicant data shall be submitted to the office with the findings of the PAS team.

(h) If the PAS team finds that placement in a health facility should be denied, then it shall:

- (1) list the reason(s) for denial;
- (2) list the community services available to the applicant that would be more appropriate than care in a health facility;
- (3) detail the cost of those community services, regardless of the source of payment;
- (4) detail the cost of placement in a health facility (which shall include the cost of all services, including those costs in addition to per diem that the applicant will require), regardless of the source of payment;
- (5) discuss the alternative service plan with the applicant after completion of the assessment;
- (6) submit the findings in writing to the office; and
- (7) make appropriate referral for case management services if the services are available.

(i) The member of the PAS team who is appointed as the representative of the prescreening agency shall obtain the information for, and prepare the assessment required by IC 12-10-12-16. (*Division of Disability, Aging, and Rehabilitative Services; 460 IAC 1-1-10; filed Jul 25, 1985, 3:39 p.m.: 8 IR 1988; filed Aug 7, 1995, 10:00 a.m.: 18 IR 3391; readopted filed Nov 14, 2001, 4:45 p.m.: 25 IR 1274*) NOTE: Transferred from the department on aging and community services (450 IAC 1-1-10) to the division of aging and rehabilitative services (460 IAC 1-1-10) by P.L.41-1987, SECTION 23, effective July 1, 1987.

460 IAC 1-1-11 Designee; duties

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

Affected: IC 12-10-12; IC 12-13-5; IC 12-14

Sec. 11. (a) It is the duty of the designee to gather sufficient information to make a decision whether an applicant qualifies for temporary admittance to a health facility under IC 12-10-12-28 through IC 12-10-12-31.

(b) The designee shall submit a decision in writing and supporting documentation regarding the allowance or disallowance of placement in a health facility under IC 12-10-12-28 through IC 12-10-12-31 to the following:

- (1) The prescreening agency.
- (2) The applicant.
- (3) The relevant health facility.

(*Division of Disability, Aging, and Rehabilitative Services; 460 IAC 1-1-11; filed Jul 25, 1985, 3:39 p.m.: 8 IR 1989; filed Aug 7, 1995, 10:00 a.m.: 18 IR 3392; readopted filed Nov 14, 2001, 4:45 p.m.: 25 IR 1275*) NOTE: Transferred from the department on aging and community services (450 IAC 1-1-11) to the division of aging and rehabilitative services (460 IAC 1-1-11) by P.L.41-1987, SECTION 23, effective July 1, 1987.

460 IAC 1-1-12 Office of Medicaid policy and planning; duties

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

Affected: IC 12-10-12-20; IC 12-13-5; IC 12-14

Sec. 12. (a) The final preadmission screening determination under IC 12-10-12-20(b) shall be rendered by the office within three (3) working days of receipt of the prescreening documentation and recommendation.

(b) The office shall notify:

- (1) the applicant;
- (2) the prescreening agency; and
- (3) the health facility;

in writing of the prescreening determination, including data on alternative community services as identified in the recommendation of the prescreening team.

(c) A final determination that the person is appropriate for nursing facility care shall be rendered when the person's condition

meets the nursing facility level of services as set forth in 405 IAC 1-3-1 through 405 IAC 1-3-3 and:

- (1) alternative community services are not sufficient to meet the needs of the person;
- (2) appropriate and beneficial alternative community services that have been identified are not immediately accessible by the person due to the lack of services in the county or a waiting list for needed services in the county; or
- (3) appropriate and beneficial alternative community services that have been identified are immediately accessible, regardless of whether the cost of such services is greater than the cost of nursing home care.

(d) When the criteria in subsection (c) are not met, a final determination that the person is inappropriate for nursing facility care shall be rendered.

(e) The office shall retain a record of each determination that is a disapproval of admission or a waiver of a requirement in this rule for at least three (3) years. (*Division of Disability, Aging, and Rehabilitative Services; 460 IAC 1-1-12; filed Jul 25, 1985, 3:39 p.m.: 8 IR 1989; filed Aug 7, 1995, 10:00 a.m.: 18 IR 3392; readopted filed Nov 14, 2001, 4:45 p.m.: 25 IR 1276*) NOTE: Transferred from the department on aging and community services (450 IAC 1-1-12) to the division of aging and rehabilitative services (460 IAC 1-1-12) by P.L.41-1987, SECTION 23, effective July 1, 1987.

460 IAC 1-1-13 Individual compliance with PAS program

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

Affected: IC 12-10-12-33; IC 12-10-12-34; IC 12-13-5; IC 12-14

Sec. 13. (a) It is the responsibility of each prescreening agency to monitor individual compliance with the PAS program and report to the office. It is the responsibility of the office to impose the PAS penalty under IC 12-10-12-33 and IC 12-10-12-34 if there is noncompliance.

(b) Whenever an individual requests Medicaid payment of per diem for care in a health facility, the office must verify that individual's PAS status. (*Division of Disability, Aging, and Rehabilitative Services; 460 IAC 1-1-13; filed Jul 25, 1985, 3:39 p.m.: 8 IR 1990; filed Aug 7, 1995, 10:00 a.m.: 18 IR 3393; readopted filed Nov 14, 2001, 4:45 p.m.: 25 IR 1276*) NOTE: Transferred from the department on aging and community services (450 IAC 1-1-13) to the division of aging and rehabilitative services (460 IAC 1-1-13) by P.L.41-1987, SECTION 23, effective July 1, 1987.

460 IAC 1-1-14 Penalties

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

Affected: IC 12-10-12; IC 12-13-5; IC 12-14

Sec. 14. (a) A person admitted to a health facility will not incur the penalties set out in IC 12-10-12-33 and IC 12-10-12-34 if authorization for admission from the prescreening agency under IC 12-10-12-28 through IC 12-10-12-31 or approval for admission under IC 12-10-12-20 has been rendered.

(b) A person admitted to a health facility on designee authorization under IC 12-10-12-28 through IC 12-10-12-31 will not incur the penalties set out in IC 12-10-12-33 and IC 12-10-12-34 if, regardless of when the determination is made:

- (1) placement in the health facility is determined to be appropriate under IC 12-10-12-20; or
- (2) the individual is discharged from the health facility within fourteen (14) days after receipt of the decision that placement in the health facility is determined to be inappropriate.

(c) The penalty under IC 12-10-12-34 shall continue only until the person receives a determination that placement in a health facility certified as a skilled nursing facility is appropriate, but in no case will last more than one (1) year from the date of admission. The time of the penalty will be computed to include the period authorized under IC 12-10-12-28 through IC 12-10-12-31 except that the penalty will not be imposed for the designee authorized time.

(d) A person who refuses to be screened by the PAS team shall incur the penalty set out in IC 12-10-12-33 or IC 12-10-12-34.

(e) However, a person who was not notified of the preadmission screening requirement will incur no penalty, unless the individual refuses to be screened after notification or is found to be inappropriate for services, in which case the individual would incur the penalty beginning with the date of notification that preadmission screening is required.

(f) The penalty set out in IC 12-10-12-33 and IC 12-10-12-34 shall not be levied against an individual who:

- (1) is eligible for and requires home and community based services approved by the Secretary of the federal Department of Health and Human Services under 42 U.S.C. 1396n; and

(2) chooses to go into a health facility.

(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 1-1-14; filed Jul 25, 1985, 3:39 p.m.: 8 IR 1990; errata, 8 IR 2041; filed Aug 7, 1995, 10:00 a.m.: 18 IR 3393; readopted filed Nov 14, 2001, 4:45 p.m.: 25 IR 1276) NOTE: Transferred from the department on aging and community services (450 IAC 1-1-14) to the division of aging and rehabilitative services (460 IAC 1-1-14) by P.L.41-1987, SECTION 23, effective July 1, 1987.

460 IAC 1-1-15 Waiver of sanctions

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

Affected: IC 12-10-12-23; IC 12-13-5; IC 12-14

Sec. 15. (a) Application for a waiver under IC 12-10-12-23 of the prescreening sanction may be made to the office. The waiver may be granted if, after investigation, it is found that the conditions under IC 12-10-12-23 were met and if the health facility and hospital when necessary cooperated in the prescreening process promptly. The office shall confer with the prescreening agency to ascertain whether the conditions established in this subsection and IC 12-10-12-23 were met. The office shall maintain written documentation on the waiver decision for a period of not less than three (3) years.

(b) The office shall provide a copy of the findings under IC 12-10-12-23 to the following:

- (1) The division.
- (2) The prescreening agency.
- (3) The applicant.

(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 1-1-15; filed Jul 25, 1985, 3:39 p.m.: 8 IR 1990; filed Aug 7, 1995, 10:00 a.m.: 18 IR 3394; readopted filed Nov 14, 2001, 4:45 p.m.: 25 IR 1277) NOTE: Transferred from the department on aging and community services (450 IAC 1-1-15) to the division of aging and rehabilitative services (460 IAC 1-1-15) by P.L.41-1987, SECTION 23, effective July 1, 1987.

460 IAC 1-1-16 Appeals

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

Affected: IC 12-10-12; IC 12-13-5; IC 12-14

Sec. 16. (a) An applicant aggrieved by a final determination of the office or the division may appeal that determination to the family and social services administration, hearings and appeals office.

(b) The request for a fair hearing must be submitted in writing and signed by the applicant. This request must be received in the family and social services administration, hearings and appeals office within thirty (30) days of the action being appealed. This thirty (30) day period is measured from the date of the applicant's receipt of the PAS decision being appealed.

(c) The office shall provide a copy of the appeal decision to the following:

- (1) The division.
- (2) The prescreening agency.
- (3) The applicant.

(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 1-1-16; filed Jul 25, 1985, 3:39 p.m.: 8 IR 1990; filed Aug 7, 1995, 10:00 a.m.: 18 IR 3394; readopted filed Nov 14, 2001, 4:45 p.m.: 25 IR 1277) NOTE: Transferred from the department on aging and community services (450 IAC 1-1-16) to the division of aging and rehabilitative services (460 IAC 1-1-16) by P.L.41-1987, SECTION 23, effective July 1, 1987.

Rule 2. Adult Protective Services

460 IAC 1-2-1 Purpose

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

Affected: IC 12-10-3; IC 35-42-2-1; IC 35-46-1-13

Sec. 1. The purpose of the adult protective services program is to provide a legal basis for intervention to protect endangered adults within the state of Indiana by receiving reports regarding adults who may be endangered, investigating those reports and

providing a coordinated and proper local response to individual cases as they are substantiated. Responsibility for investigating reports of neglect, battery, or exploitation of endangered adults, as well as for securing the appropriate social, medical, and legal intervention, shall rest with adult protective services units, designated by the division of disability, aging, and rehabilitative services. (*Division of Disability, Aging, and Rehabilitative Services; 460 IAC 1-2-1; filed Oct 30, 1985, 10:48 a.m.: 9 IR 478; readopted filed Nov 14, 2001, 4:47 p.m.: 25 IR 1278*) NOTE: Transferred from the department on aging and community services (450 IAC 1-2-1) to the division of aging and rehabilitative services (460 IAC 1-2-1) by P.L.41-1987, SECTION 23, effective July 1, 1987.

460 IAC 1-2-2 Definitions

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

Affected: IC 12-10-3; IC 35-42-2-1; IC 35-46-1-13

Sec. 2. (a) The definitions in this section apply throughout this rule.

(b) "APS unit" is the adult protective services unit, charged with receiving and investigating reports regarding endangered adults, located throughout the state in areas designated by DDARS.

(c) "Available services" means services needed by the individual to sustain his or her life, liberty, health or property which can be obtained from a service provider serving the area in which the endangered adult is living, or which could be provided by a willing neighbor, friend, or relative.

(d) "DDARS" is the division of disability, aging, and rehabilitative services.

(e) "Emergency" refers to a situation in which the possibility of immediate physical danger to the adult exists.

(f) "Endangered adult" means an individual who is eighteen (18) years of age or older and who:

(1) is incapable by reason of mental illness, mental retardation, dementia, habitual drunkenness, excessive use of drugs, or other physical or mental incapacity, of managing or directing the management of the individual's property or providing self-care; and

(2) is harmed or threatened with harm as a result of:

(A) neglect;

(B) battery; or

(C) exploitation of the individual's personal services or property.

The term includes individuals who are endangered as a consequence of their own inability to care for themselves and who would receive little or no help except through the services of an external intervenor.

(g) "Exploitation of the individual's personal services or property" includes, but is not limited to sexual misuse as well as the use of the endangered adult's labor without pay or exerting unauthorized control over the finances or property of the endangered adult.

(h) "Neglect" means that the endangered adult or the person who takes care of the endangered adult is unable or fails to provide adequate food, clothing, shelter or medical care.

(i) "Substantiated" means that endangerment was established to the satisfaction of the APS unit as relates to the definition of an endangered adult.

(j) "Unsubstantiated" means that endangerment of an individual was not established to the satisfaction of the APS unit, within the meaning of IC 12-10-3. (*Division of Disability, Aging, and Rehabilitative Services; 460 IAC 1-2-2; filed Oct 30, 1985, 10:48 a.m.: 9 IR 478; readopted filed Nov 14, 2001, 4:47 p.m.: 25 IR 1278*) NOTE: Transferred from the department on aging and community services (450 IAC 1-2-2) to the division of aging and rehabilitative services (460 IAC 1-2-2) by P.L.41-1987, SECTION 23, effective July 1, 1987.

460 IAC 1-2-3 Agency cooperation

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

Affected: IC 12-10-3; IC 35-42-2-1; IC 35-46-1-13

Sec. 3. All appropriate governmental agencies shall cooperate in the implementation of the provisions of IC 12-10-3 and coordinate services to endangered adults and shall share such information concerning the allegation of battery, neglect, exploitation, or endangerment of adults as requested by each other, except to the extent that the information is otherwise protected under state or federal law. (*Division of Disability, Aging, and Rehabilitative Services; 460 IAC 1-2-3; filed Oct 30, 1985, 10:48 a.m.: 9 IR 478;*

readopted filed Nov 14, 2001, 4:47 p.m.: 25 IR 1278) NOTE: Transferred from the department on aging and community services (450 IAC 1-2-3) to the division of aging and rehabilitative services (460 IAC 1-2-3) by P.L.41-1987, SECTION 23, effective July 1, 1987.

460 IAC 1-2-4 Division's duties

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

Affected: IC 12-10-3-7; IC 12-10-3-10; IC 35-42-2-1; IC 35-46-1-13

Sec. 4. DDARS shall do the following:

- (1) Provide information and education to the general public regarding the existence of the adult protective services law and available services.
- (2) Prescribe the forms and procedures to be followed in the implementation of the program.
- (3) Contract with entities, as identified at IC 12-10-3-7, to perform the duties of adult protective services units.
- (4) Provide training and technical assistance in program operation and service delivery to the units.
- (5) Monitor the program and fiscal activities of the units.
- (6) Receive all reports of known or suspected neglect, battery, or exploitation which are communicated in person, in writing, or by telephone:
 - (A) establish and operate a statewide toll-free telephone line, answered twenty-four (24) hours a day, seven (7) days a week;
 - (B) document the receipt of all reports, by obtaining all necessary information as per IC 12-10-3-10;
 - (C) make a determination and classify the status of each report upon receipt as either emergency or nonemergency;
 - (D) refer all emergency reports received to the appropriate law enforcement agency immediately, and notify the appropriate APS unit of the referral to the law enforcement agency; and
 - (E) refer all nonemergency reports received to the appropriate APS unit within five (5) working days.
- (7) Report to the general assembly before February 2 of each year concerning, at a minimum:
 - (A) the division's activities in the preceding year under IC 12-10-3; and
 - (B) program recommendations for continuing protection of endangered adults.

(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 1-2-4; filed Oct 30, 1985, 10:48 a.m.: 9 IR 479; readopted filed Nov 14, 2001, 4:47 p.m.: 25 IR 1279) NOTE: Transferred from the department on aging and community services (450 IAC 1-2-4) to the division of aging and rehabilitative services (460 IAC 1-2-4) by P.L.41-1987, SECTION 23, effective July 1, 1987.

460 IAC 1-2-5 Adult protective services unit's duties

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

Affected: IC 12-10-3; IC 35-42-2-1; IC 35-46-1-13

Sec. 5. The APS unit shall assure that the following activities are carried out:

- (1) Secure and maintain a full-time equivalent qualified protective services coordinator, as defined in 460 IAC 1-2-6.
- (2) Cooperate with DDARS to provide information and education to the general public within the designated area regarding the existence of the adult protective services law and available services.
- (3) Accept all reports of adult battery, neglect and exploitation from individuals, health care and human service professionals, institutions, law enforcement officials, DDARS, and other sources.
- (4) Document the receipt of reports on the official report form developed by DDARS, obtaining all available and pertinent information.
- (5) Conduct an investigation of all reports of battery, neglect, and exploitation to ascertain the condition and safety of the allegedly endangered adult:
 - (A) immediately when the possibility of physical danger to the adult exists; or
 - (B) as soon as possible after receipt of a report (within twenty calendar days).
- (6) Follow procedures for coordination with the Indiana state department of health as per IC 12-10-3-17.
- (7) Maintain procedures for appropriate access to and for safeguarding of the confidentiality of records.
- (8) Be familiar with available community resources.

- (9) Seek cooperation from other public and private agencies and individuals in the geographic services region which offer services as may be needed by endangered adults.
- (10) Cooperate with all the APS units in Indiana.
- (11) Participate in DDARS-sponsored in-service training.
- (12) After initial investigation, proper notification that the report is unsubstantiated shall be made to concerned parties, at the discretion of the APS unit.
- (13) Report to DDARS on forms provided by DDARS, information concerning each report of battery, neglect, or exploitation received and investigated, within time frames established by DDARS, including those reports made to the state department of health.
- (14) Transmit to DDARS all identifying records concerning unsubstantiated reports in accordance with DDARS policy and procedures.
- (15) In instances of substantiated reports, obtain an assessment of the endangered adult's situation and needs, and coordinate with the appropriate social services agencies who will develop a service plan for the provision of protective services (in cooperation with the endangered adult).
- (16) The plan for the provision of protective services shall be given to the endangered adult in writing, and shall include:
 - (A) a statement of the problem;
 - (B) one (1) or more goal statements;
 - (C) a description of the desired state of client functioning;
 - (D) identification of the appropriate and least restrictive services;
 - (E) the frequency and duration of anticipated service delivery; and
 - (F) the manner in which the effectiveness of the services will be monitored and evaluated.
- (17) Approve said plan and assure that the available necessary protective services for the endangered adult are secured.
- (18) Monitor and maintain complete documentation of the implementation of the protective services plan.
- (19) Petition, through the prosecuting attorney's office, the court having probate jurisdiction in the county of the adult's residence, for an order to enjoin interference with the delivery of protective services arranged by the division or unit with the consent of the endangered adult, when such interference is occurring.
- (20) Petition the probate court having jurisdiction in the county in which the endangered adult resides, to secure a protective order requiring that the adult receive protective services, only when:
 - (A) the individual does not consent, or withdraws consent previously given, to the receipt of the protective services; and
 - (B) the individual is an endangered adult under IC 12-10-3-2(a); and
 - (C) the individual, in the opinion of the APS unit, lacks the capacity to understand the clear consequences of his or her decisions, in accordance with IC 29-1-18.

A petition for a protective order does not constitute an action for guardianship.

(21) When a protective order is required, approve and submit to the court, a plan for the provision of the protective services, which includes, at the minimum, the items identified in subdivision (16) of this section.

(22) Petition the court to modify or terminate a protective services order, as necessary, as per IC 12-10-3-25.

(23) Petition the court to hold a hearing on the question of continuing jurisdiction, as per IC 12-10-3-26.

(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 1-2-5; filed Oct 30, 1985, 10:48 a.m.: 9 IR 479; readopted filed Nov 14, 2001, 4:47 p.m.: 25 IR 1279) NOTE: Transferred from the department on aging and community services (450 IAC 1-2-5) to the division of aging and rehabilitative services (460 IAC 1-2-5) by P.L.41-1987, SECTION 23, effective July 1, 1987.

460 IAC 1-2-6 Coordinator's qualifications

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

Affected: IC 12-10-3; IC 35-42-2-1; IC 35-46-1-13

Sec. 6. An adult protective services unit coordinator shall have, at a minimum:

- (1) a bachelor's degree in an appropriate area of concentration, with one (1) relevant internship; or
- (2) two (2) years of experience in investigation or other relevant work.

(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 1-2-6; filed Oct 30, 1985, 10:48 a.m.: 9 IR 480; readopted filed

Nov 14, 2001, 4:47 p.m.: 25 IR 1280) NOTE: Transferred from the department on aging and community services (450 IAC 1-2-6) to the division of aging and rehabilitative services (460 IAC 1-2-6) by P.L.41-1987, SECTION 23, effective July 1, 1987.

460 IAC 1-2-7 Complaints regarding residents of health facilities

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

Affected: IC 12-10-3; IC 16-28; IC 35-42-2-1; IC 35-46-1-13

Sec. 7. DDARS and the APS unit shall:

- (1) refer reports concerning individuals who are residents of health facilities licensed under IC 16-28 to the Indiana state department of health immediately; and
- (2) cooperate with the Indiana state department of health in these cases and carry out the remaining activities of case processing at the request of the department;

DDARS shall notify the appropriate APS unit of the referral to the Indiana state department of health, and all APS units shall notify DDARS of referrals to the Indiana state department of health. (*Division of Disability, Aging, and Rehabilitative Services; 460 IAC 1-2-7; filed Oct 30, 1985, 10:48 a.m.: 9 IR 480; readopted filed Nov 14, 2001, 4:47 p.m.: 25 IR 1280*) NOTE: Transferred from the department on aging and community services (450 IAC 1-2-7) to the division of aging and rehabilitative services (460 IAC 1-2-7) by P.L.41-1987, SECTION 23, effective July 1, 1987.

460 IAC 1-2-8 Indiana state department of health; duties

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

Affected: IC 12-10-3; IC 16-28; IC 35-42-2-1; IC 35-46-1-13

Sec. 8. The Indiana state department of health shall:

- (1) receive reports of endangered adults who are residents of facilities licensed under IC 16-28 from DDARS and the APS units;
- (2) refer appropriate cases (as defined by the Indiana state department of health) to DDARS or the APS units for investigation, assessment and to assure the provision of protective services; and
- (3) send completed report forms for all reports of endangered adults, whether substantiated or unsubstantiated, and whether primarily reported to the Indiana state department of health, DDARS or the APS units to DDARS for statistical and substantive records.

(*Division of Disability, Aging, and Rehabilitative Services; 460 IAC 1-2-8; filed Oct 30, 1985, 10:48 a.m.: 9 IR 480; readopted filed Nov 14, 2001, 4:47 p.m.: 25 IR 1280*) NOTE: Transferred from the department on aging and community services (450 IAC 1-2-8) to the division of aging and rehabilitative services (460 IAC 1-2-8) by P.L.41-1987, SECTION 23, effective July 1, 1987.

460 IAC 1-2-9 Maintenance of records

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

Affected: IC 12-10-3-13; IC 35-42-2-1; IC 35-46-1-13

Sec. 9. (a) For substantiated reports, DDARS and the APS units shall maintain identifying records concerning:

- (1) reports which identify the endangered adult;
- (2) types of protective services provided, and identity of the service provider(s); and
- (3) agencies, persons, or institutions who are determined to have permitted or inflicted neglect, battery, or exploitation.

(b) For unsubstantiated reports, DDARS shall:

- (1) receive all identifying records concerning unsubstantiated reports (as determined by the APS units) from the APS units;
- (2) destroy identifying information on said records within one hundred eighty (180) days after the receipt of those records; and
- (3) maintain nonidentifying statistical records concerning unsubstantiated reports, and make this information available to the entities listed at IC 12-10-3-13.

(*Division of Disability, Aging, and Rehabilitative Services; 460 IAC 1-2-9; filed Oct 30, 1985, 10:48 a.m.: 9 IR 481; readopted filed Nov 14, 2001, 4:47 p.m.: 25 IR 1281*) NOTE: Transferred from the department on aging and community services (450 IAC 1-2-9)

to the division of aging and rehabilitative services (460 IAC 1-2-9) by P.L.41-1987, SECTION 23, effective July 1, 1987.

460 IAC 1-2-10 Reporting battery, neglect, or exploitation

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

Affected: IC 12-10-3; IC 35-42-2-1; IC 35-46-1-13

Sec. 10. (a) Persons shall report known or suspected neglect, battery, or exploitation of an adult to DDARS, an APS unit, or a law enforcement agency by telephone, in writing, or in person.

(b) Requirements for confidentiality of reports shall be as follows:

(1) The identity of the reporting person shall be kept confidential and be disclosed only with the written consent of that person or by judicial process.

(2) In no event, however, shall the identity of the person who made the report be disclosed to an alleged abuser, except by judicial order.

(c) Requirements for classification and transmittal of reports shall be as follows:

(1) Every incident of neglect, battery, or exploitation which is received by the unit shall be reported to DDARS on forms provided by DDARS within twenty (20) calendar days of receiving the report.

(2) Within thirty (30) calendar days of completing the investigation, the unit shall make a determination and classify all reports as substantiated or unsubstantiated, and transmit said determination to DDARS.

(3) When the classification of a substantiated report has changed to unsubstantiated, the unit shall notify DDARS and transmit all identifying records as required in section 5(14) of this rule.

(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 1-2-10; filed Oct 30, 1985, 10:48 a.m.: 9 IR 481; readopted filed Nov 14, 2001, 4:47 p.m.: 25 IR 1281) NOTE: Transferred from the department on aging and community services (450 IAC 1-2-10) to the division of aging and rehabilitative services (460 IAC 1-2-10) by P.L.41-1987, SECTION 23, effective July 1, 1987.

460 IAC 1-2-11 Rights of the alleged endangered adult

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

Affected: IC 12-10-3; IC 35-42-2-1; IC 35-46-1-13

Sec. 11. (a) Requirements for a right to counsel shall be as follows:

(1) At any time, a person who may be designated an endangered adult has the right to secure legal counsel; either a private attorney or if eligible, a legal services attorney.

(2) If the endangered adult does not consent or has withdrawn consent to receive protective services and a petition has been filed in probate court, the endangered adult is entitled:

(A) to be represented by counsel; and

(B) to have the court appoint counsel if said endangered adult is determined to be indigent.

(3) If the endangered adult is receiving protective services and an individual interferes with the provision of those services, the endangered adult is entitled to be represented by the prosecuting attorney's office in obtaining an order to enjoin the interference with the delivery of the service.

(b) The endangered adult has the right to protective services that offer the least restrictive alternative.

(c) The endangered adult has the right to privacy and confidentiality, within the boundaries of IC 12-10-3.

(d) The protective services plan must take into account, to the extent feasible, the expressed preferences of the endangered adult.

(e) A competent adult, even though endangered, has the right to refuse protective services. However, the APS unit should make every effort to fully inform the endangered adult of the benefits available from protective services, and of the problems which could be exacerbated if protective services were refused.

(f) The endangered adult has the right to have court-ordered protective services reviewed by the court once every six (6) months. *(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 1-2-11; filed Oct 30, 1985, 10:48 a.m.: 9 IR 481; readopted filed Nov 14, 2001, 4:47 p.m.: 25 IR 1281) NOTE: Transferred from the department on aging and community services (450 IAC 1-2-11) to the division of aging and rehabilitative services (460 IAC 1-2-11) by P.L.41-1987, SECTION 23, effective July 1, 1987.*

460 IAC 1-2-12 Appeal rights of the allegedly endangered adult

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

Affected: IC 4-21.5; IC 12-10-3; IC 35-42-2-1; IC 35-46-1-13

Sec. 12. (a) An endangered adult, aggrieved by an action of the adult protective services unit or by DDARS regarding adult protective services may appeal that action to DDARS, after attempting to resolve the problem with the APS unit.

(b) The decision to conduct an investigation pursuant to a report under IC 12-10-3, is not appealable.

(c) The request for a hearing must be submitted in writing and signed by the appellant or his/her representative. This request must be received by DDARS within thirty (30) calendar days of the appellant's notification of the action being appealed.

(d) DDARS shall hold the hearing within thirty (30) calendar days after receipt of the request for a hearing.

(e) The hearing shall be conducted in accordance with the Indiana Administrative Orders and Procedures Act, IC 4-21.5.

(f) DDARS shall notify the appellant and the adult protective services unit by registered mail of the appeal decision within ten (10) calendar days after the hearing. (*Division of Disability, Aging, and Rehabilitative Services; 460 IAC 1-2-12; filed Oct 30, 1985, 10:48 a.m.: 9 IR 482; readopted filed Nov 14, 2001, 4:47 p.m.: 25 IR 1282*) NOTE: Transferred from the department on aging and community services (450 IAC 1-2-12) to the division of aging and rehabilitative services (460 IAC 1-2-12) by P.L.41-1987, SECTION 23, effective July 1, 1987.

Rule 3. Rate-Setting Criteria for Providers in the Assistance to Residents in County Homes Program (ARCH) and the Room and Board Assistance Program (RBA)

460 IAC 1-3-1 Policy; scope (Repealed)

Sec. 1. (*Repealed by Division of Disability, Aging, and Rehabilitative Services; filed Jun 5, 2003, 8:30 a.m.: 26 IR 3644*)

460 IAC 1-3-2 Definitions (Repealed)

Sec. 2. (*Repealed by Division of Disability, Aging, and Rehabilitative Services; filed Jun 5, 2003, 8:30 a.m.: 26 IR 3644*)

460 IAC 1-3-3 Accounting records; retention schedule; audit trail; accrual basis; segregation of accounts by nature of business and by location (Repealed)

Sec. 3. (*Repealed by Division of Disability, Aging, and Rehabilitative Services; filed Jun 5, 2003, 8:30 a.m.: 26 IR 3644*)

460 IAC 1-3-4 Financial report to division; annual schedule; prescribed form; extensions; penalty for untimely filing (Repealed)

Sec. 4. (*Repealed by Division of Disability, Aging, and Rehabilitative Services; filed Jun 5, 2003, 8:30 a.m.: 26 IR 3644*)

460 IAC 1-3-5 New provider; initial financial report to division; criteria for establishing initial interim rates; supplemental report; base rate setting (Repealed)

Sec. 5. (*Repealed by Division of Disability, Aging, and Rehabilitative Services; filed Jun 5, 2003, 8:30 a.m.: 26 IR 3644*)

460 IAC 1-3-6 Active providers; rate review; annual request; additional requests; requests due to change in law; request concerning capital return factor; computation of factor (Repealed)

Sec. 6. (*Repealed by Division of Disability, Aging, and Rehabilitative Services; filed Jun 5, 2003, 8:30 a.m.: 26 IR 3644*)

460 IAC 1-3-7 Request for rate review; budget component; occupancy level assumptions; effect of inflation assumptions (Repealed)

DIVISION OF DISABILITY, AGING, AND REHABILITATIVE SERVICES

Sec. 7. *(Repealed by Division of Disability, Aging, and Rehabilitative Services; filed Jun 5, 2003, 8:30 a.m.: 26 IR 3644)*

460 IAC 1-3-8 Limitations or qualifications to ARCH/RBA reimbursement; advertising; vehicle basis; litigation expenses (Repealed)

Sec. 8. *(Repealed by Division of Disability, Aging, and Rehabilitative Services; filed Jun 5, 2003, 8:30 a.m.: 26 IR 3644)*

460 IAC 1-3-9 Criteria limiting rate adjustment granted by division (Repealed)

Sec. 9. *(Repealed by Division of Disability, Aging, and Rehabilitative Services; filed Jun 5, 2003, 8:30 a.m.: 26 IR 3644)*

460 IAC 1-3-10 Computation of rate; allowable costs; review of cost reasonableness (Repealed)

Sec. 10. *(Repealed by Division of Disability, Aging, and Rehabilitative Services; filed Jun 5, 2003, 8:30 a.m.: 26 IR 3644)*

460 IAC 1-3-11 Allowable costs; services provided by parties related to provider (Expired)

Sec. 11. *(Expired under IC 4-22-2.5, effective January 1, 2002.)*

460 IAC 1-3-12 Allowable costs; capital return factor (Repealed)

Sec. 12. *(Repealed by Division of Disability, Aging, and Rehabilitative Services; filed Jun 5, 2003, 8:30 a.m.: 26 IR 3644)*

460 IAC 1-3-13 Allowable cost; capital return factor; computation of use fee component; interest; allocation of loan to facilities and parties (Repealed)

Sec. 13. *(Repealed by Division of Disability, Aging, and Rehabilitative Services; filed Jun 5, 2003, 8:30 a.m.: 26 IR 3644)*

460 IAC 1-3-14 Allowable costs; capital return factor; computation of return on equity component (Repealed)

Sec. 14. *(Repealed by Division of Disability, Aging, and Rehabilitative Services; filed Jun 5, 2003, 8:30 a.m.: 26 IR 3644)*

460 IAC 1-3-15 Allowable costs; capital return factor; use fee; depreciable life; property basis (Repealed)

Sec. 15. *(Repealed by Division of Disability, Aging, and Rehabilitative Services; filed Jun 5, 2003, 8:30 a.m.: 26 IR 3644)*

460 IAC 1-3-16 Capital return factor; basis; historical cost; mandatory record keeping; valuation (Expired)

Sec. 16. *(Expired under IC 4-22-2.5, effective January 1, 2002.)*

460 IAC 1-3-17 Capital return factor; basis; sale or capital lease of facility; valuation; sale or lease among family members (Expired)

Sec. 17. *(Expired under IC 4-22-2.5, effective January 1, 2002.)*

460 IAC 1-3-18 Unallowable costs; cost adjustments; charity and courtesy allowances; discounts; rebates; refunds of expenses (Expired)

Sec. 18. *(Expired under IC 4-22-2.5, effective January 1, 2002.)*

460 IAC 1-3-19 Allowable costs; wages; costs of employment; record keeping; owner or related party compensation (Expired)

Sec. 19. (Expired under IC 4-22-2.5, effective January 1, 2002.)

460 IAC 1-3-20 Allowable costs; calculation of allowable owner or related party compensation; wages; salaries; fees; fringe benefits (Expired)

Sec. 20. (Expired under IC 4-22-2.5, effective January 1, 2002.)

460 IAC 1-3-21 Administrative reconsideration; appeal (Expired)

Sec. 21. (Expired under IC 4-22-2.5, effective January 1, 2002.)

Rule 3.3. Residential Care Assistance Program Reimbursement

460 IAC 1-3.3-1 Policy; scope

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-10-6
Affected: IC 12-30; IC 16-28

Sec. 1. (a) This rule sets forth the per diem rate for reimbursement of providers providing residential care to recipients receiving residential care assistance from the division.

(b) Reimbursement is contingent upon current licensure by the Indiana state department of health for facilities requiring licensure and a current provider agreement with the division.

(c) The per diem reimbursements set forth a per diem rate that is based on the costs that must be incurred by efficiently and economically operated facilities in order to provide room, board, laundry, and other services, along with administrative direction to recipients. (*Division of Disability, Aging, and Rehabilitative Services; 460 IAC 1-3.3-1; filed Jun 5, 2003, 8:30 a.m.: 26 IR 3643*)

460 IAC 1-3.3-2 Definitions

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-10-6
Affected: IC 12-30; IC 16-28

Sec. 2. (a) The definitions in this section apply throughout this rule.

(b) "County home" means a residential facility owned, staffed, maintained, and operated by a county government that provides residential care to individuals.

(c) "Division" means the division of disability, aging, and rehabilitative services.

(d) "Facility" means a county home or residential home with a current contract with the division to provide residential care assistance.

(e) "Recipient" means an individual who is receiving residential care assistance.

(f) "Residential care" means room, board, and laundry, along with minimal administrative direction.

(g) "Residential care assistance" means state financial assistance through the division for residential care.

(h) "Residential home" means a facility licensed under IC 16-28 or an accredited Christian Science facility listed and certified by the Commission for Accreditation of Christian Science Nursing Organization/Facilities, Inc., that meets certain life safety standards considered necessary by the state fire marshal, that provides residential care to individuals. (*Division of Disability, Aging, and Rehabilitative Services; 460 IAC 1-3.3-2; filed Jun 5, 2003, 8:30 a.m.: 26 IR 3644*)

460 IAC 1-3.3-3 Per diem reimbursement rates

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-10-6
Affected: IC 12-10-6-4; IC 12-30; IC 16-28

Sec. 3. (a) Subject to the availability of funds appropriated for the residential care assistance program, a facility that is not licensed under IC 16-28 that is providing residential care shall receive per diem reimbursement of twenty-seven dollars (\$27) for each recipient. If such facility charges the general public a rate of less than twenty-seven dollars (\$27), the facility shall receive per diem reimbursement from the division equal to the rate the facility charges the general public.

(b) Subject to the availability of funds appropriated for the residential care assistance program, a facility that is licensed under IC 16-28 that is providing residential care shall receive per diem reimbursement of thirty-nine dollars and thirty-five cents (\$39.35) for each recipient receiving residential care assistance from the division. This per diem reimbursement takes into account the rules for residential care for facilities that are licensed under IC 16-28. If such facility charges the general public a rate of less than thirty-nine dollars and thirty-five cents (\$39.35), the facility shall receive per diem reimbursement from the division equal to the rate the facility charges the general public.

(c) If a recipient has applied excess income toward residential care assistance pursuant to IC 12-10-6-4(b), the amount paid by the division to the affected provider will be reduced by the amount received by the recipient. (*Division of Disability, Aging, and Rehabilitative Services; 460 IAC 1-3.3-3; filed Jun 5, 2003, 8:30 a.m.: 26 IR 3644*)

460 IAC 1-3.3-4 Annual review of per diem reimbursement rate

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-10-6

Affected: IC 12-30; IC 16-28

Sec. 4. (a) By March 1 of each year, providers receiving reimbursement from the division to provide residential care shall submit on a form approved by the division a summary of the provider's costs.

(b) Based upon the cost information submitted pursuant to subsection (a), the division shall annually review the per diem reimbursement rates established by this article. (*Division of Disability, Aging, and Rehabilitative Services; 460 IAC 1-3.3-4; filed Jun 5, 2003, 8:30 a.m.: 26 IR 3644*)

Rule 3.5. Residential Care Assistance

460 IAC 1-3.5-1 Definitions (Expired)

Sec. 1. (*Expired under IC 4-22-2.5, effective January 1, 2004.*)

460 IAC 1-3.5-2 Availability of funds (Expired)

Sec. 2. (*Expired under IC 4-22-2.5, effective January 1, 2004.*)

460 IAC 1-3.5-3 Enrollment at a facility (Expired)

Sec. 3. (*Expired under IC 4-22-2.5, effective January 1, 2004.*)

460 IAC 1-3.5-4 Return to a facility (Expired)

Sec. 4. (*Expired under IC 4-22-2.5, effective January 1, 2004.*)

Rule 3.6. Residential Care Assistance Program

460 IAC 1-3.6-1 Definitions

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-10-6

Affected: IC 12-30; IC 16-28

Sec. 1. (a) The definitions in this section apply throughout this rule.

(b) "County home" means a residential facility owned, staffed, maintained, and operated by a county government that provides

residential care to individuals.

(c) "County office" means the county office of family and children.

(d) "Division" means the division of disability, aging, and rehabilitative services.

(e) "Residential care" provided in a county home is nonmedical assistance provided to a resident. Residential care provided in a residential home is room, board, and laundry, along with minimal administrative direction.

(f) "Residential care assistance" means state financial assistance through the division paid on behalf of a resident of a county home or residential home who has been found to be eligible for assistance.

(g) "Residential home" means a residential care setting licensed under IC 16-28 or an accredited Christian Science facility listed and certified by the Commission for Accreditation of Christian Science Nursing Organizations/Facilities, Inc., that meets certain life safety standards considered necessary by the state fire marshal. (*Division of Disability, Aging, and Rehabilitative Services; 460 IAC 1-3.6-1; filed Nov 14, 2001, 4:50 p.m.: 25 IR 1140*)

460 IAC 1-3.6-2 Eligibility for assistance for county home residents

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-10-6

Affected: IC 12-30

Sec. 2. (a) An individual is eligible for residential care assistance in a county home if the individual:

(1) is at least sixty-five (65) years of age, blind, or disabled;

(2) is a resident of a county home; and

(3) would be eligible for federal Supplemental Security Income assistance except for the fact that the individual is residing in a county home.

(b) An individual will be determined to be eligible for federal Supplemental Security Income assistance if the individual does any of the following:

(1) Presents verification that the individual is currently receiving federal Supplemental Security Income benefits.

(2) Presents verification that the individual is currently receiving Medicaid benefits.

(3) It is determined by the county office that the individual is eligible for federal Supplemental Security Income benefits. An individual shall be determined to be eligible for federal Supplemental Security Income benefits if the individual:

(A) has a disability that meets the definition of disability contained in 42 U.S.C. 1382c(a)(3)(A) and 42 U.S.C. 1382c(a)(3)(B); and

(B) is financially eligible for federal Supplemental Security Income benefits.

(c) An individual who is disabled because of mental illness may be admitted to a county home only to the extent that money is available for the individual's care. (*Division of Disability, Aging, and Rehabilitative Services; 460 IAC 1-3.6-2; filed Nov 14, 2001, 4:50 p.m.: 25 IR 1140*)

460 IAC 1-3.6-3 Eligibility for assistance in a residential home

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-10-6

Affected: IC 12-10-6

Sec. 3. (a) An individual is eligible for residential care assistance in a residential home if the individual:

(1) is a current recipient of Medicaid or federal Supplemental Security Income benefits; and

(2) can be adequately cared for in a residential care setting.

(b) An individual will be determined to be able to be adequately cared for in a residential home if an individual is admitted to or cared for in a residential home.

(c) An individual diagnosed with mental retardation may not be admitted to a residential home.

(d) An individual who is disabled because of mental illness may be admitted to a residential home only to the extent that money is available for the individual's care. (*Division of Disability, Aging, and Rehabilitative Services; 460 IAC 1-3.6-3; filed Nov 14, 2001, 4:50 p.m.: 25 IR 1140*)

460 IAC 1-3.6-4 Continuing financial eligibility

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-10-6
Affected: IC 12-30

Sec. 4. An individual who is receiving residential care assistance and has an increase in income that would render the individual ineligible for residential care assistance may elect to continue to be eligible for residential care assistance by paying the excess income to the county home or residential home that provides residential care to the individual. (*Division of Disability, Aging, and Rehabilitative Services; 460 IAC 1-3.6-4; filed Nov 14, 2001, 4:50 p.m.: 25 IR 1141*)

460 IAC 1-3.6-5 Annual review

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-10-6
Affected: IC 12-30

Sec. 5. Eligibility for residential care assistance shall be redetermined by the county office on an annual basis, upon a change in the eligible individual's status as a recipient of Medicaid or federal Supplemental Security Income benefits, or upon a change in the medical status of a resident of a county home that would render the resident ineligible for federal Supplemental Security Income benefits. (*Division of Disability, Aging, and Rehabilitative Services; 460 IAC 1-3.6-5; filed Nov 14, 2001, 4:50 p.m.: 25 IR 1141*)

Rule 4. Community and Home Options to Institutional Care for the Elderly and Disabled Program

460 IAC 1-4-1 Purpose

Authority: IC 12-9-2-3; IC 12-10-10-6
Affected: IC 12-10-10

Sec. 1. The purpose of this rule is to implement the community and home options to institutional care for the elderly and disabled program, authorized by IC 12-10-10, which provides case management services, assessment, and in-home and community services to individuals who are at least sixty (60) years of age or persons of any age who have a disability due to a mental or physical impairment and who are found to be at risk of losing their independence. (*Division of Disability, Aging, and Rehabilitative Services; 460 IAC 1-4-1; filed Dec 5, 1995, 8:30 a.m.: 19 IR 1103; readopted filed Oct 1, 2001, 3:38 p.m.: 25 IR 528*)

460 IAC 1-4-2 Definitions

Authority: IC 12-9-2-3; IC 12-10-10-6
Affected: IC 12-7-2-184; IC 12-10-1-1; IC 12-10-1-4; IC 12-10-10

Sec. 2. As used in this rule, the following definitions apply:

- (1) "AAA" refers to the agency designated by the bureau in each planning and service area under IC 12-10-1-4(18).
- (2) "Adult day care services" means the provision of a comprehensive structured program in a protective setting during the daytime and early evening hours.
- (3) "Advocate" means any legal representative or any other person whom the applicant or participant chooses to assist him or her at any stage of the appeals process.
- (4) "Applicant" means an individual who resides in Indiana and who has submitted an application to the area agency on aging for the CHOICE program.
- (5) "At risk of losing the individual's independence" means that the individual meets the criteria specified in IC 12-10-10-4(b).
- (6) "Attendant care services" means assistance with nonmedical personal care services such as:
 - (A) personal hygiene activities;
 - (B) ambulation and transfer of the individual;
 - (C) assisting the individual with communication;
 - (D) disposal of bodily waste;
 - (E) meeting the individual's nutritional needs; and
 - (F) ensuring the individual's physical safety.

- (7) "Bureau" refers to the bureau of aging and in-home services established within the division under IC 12-10-1-1.
- (8) "Care plan" means the plan of services developed by the AAA under IC 12-10-10-1(2).
- (9) "Case management" means the administrative functions performed by the AAA under IC 12-10-10-1.
- (10) "CHOICE" refers to the community and home options to institutional care for the elderly and disabled program.
- (11) "CHOICE guidelines and procedures manual" refers to the document published by the division to define the protocol of the CHOICE program.
- (12) "CHOICE representative" means a person authorized to act on behalf of an individual, as specified under section 4 of this rule, if the individual lacks the capacity to make a knowing and informed decision regarding his or her own care.
- (13) "Community and home care services", "in-home and community services", or "CHOICE services" means those services specified in IC 12-10-10-2.
- (14) "Division" or "DDARS" refers to the division of disability, aging, and rehabilitative services.
- (15) "Home delivered meals" means an appropriate, nutritionally balanced meal that meets at least one-third (1/3) of the current recommended dietary allowance (RDA) delivered to the individual's home.
- (16) "Home health services and supplies" means services and supplies that include all health monitoring activities performed in the home, the supervision of medication, care and maintenance of any appliances or equipment necessary to maintain health, safety, and independence, and dressing changes.
- (17) "Homemaker services" means those household tasks that enable an individual to live in a clean, safe, and healthy home environment, including grocery shopping and meals preparation.
- (18) "Institutional care" means continuous, twenty-four (24) hour residential care provided by, among others, hospitals, nursing facilities, intermediate care facilities for the mentally retarded, community residential facilities for the developmentally disabled, residential facilities for the mentally ill, and state owned and operated institutions.
- (19) "Other services necessary to prevent institutionalization" includes, but is not limited to, the following:
 - (A) "Minor home modifications" means selected internal and external modifications to the home environment, related specifically to the individual's functional limitations, which will assist the individual in remaining in the current living situation.
 - (B) "Adaptive aids and devices" means controls, appliances, or supplies determined necessary to enable the individual to increase the ability to function in a home and community-based setting with independence and physical safety.
- (20) "Respite care services" means services provided temporarily or periodically to participants in the absence of the usual unpaid caregiver, including services provided in the home or on an overnight basis in an approved out-of-home setting such as a nursing facility.
- (21) "Transportation" means transporting the individual to and from medical or therapeutic activities that are directly related to maintaining the individual's independence.

(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 1-4-2; filed Dec 5, 1995, 8:30 a.m.: 19 IR 1104; readopted filed Oct 1, 2001, 3:38 p.m.: 25 IR 528)

460 IAC 1-4-3 Selection of local administrative units

Authority: IC 12-9-2-3; IC 12-10-10-6

Affected: IC 12-10-10-1

Sec. 3. (a) The division shall contract with the AAAs to administer CHOICE funds. These activities include local administrative functions, including, but not limited to, the following:

- (1) Budgeting.
 - (2) Case management.
 - (3) Oversight.
 - (4) Monitoring.
 - (5) Quality assurance.
 - (6) Submission of fiscal claims to the division.
- (b) Each AAA shall submit a plan to the division that contains the following:
- (1) The referral and intake process, including a description of how the process of eligibility determination will take place.
 - (2) The assessment process, format, and procedures used by case managers employed by the AAA to do assessments.

- (3) Procedures for an offer of an assessment to current nursing home residents who apply for CHOICE.
- (4) Policies for the selection and qualifications of staff.
- (5) Procedures for development of and expected timelines for care plan development, including the process for involving the client or family in the development of the care plan.
- (6) All available long term support services, both public and private, within the area.
- (7) Policies and procedures for the case management and service coordination system.
- (8) Policies and procedures for coordinating CHOICE with the Medicaid waivers and other funding sources for in-home and community-based services.
- (9) The CHOICE cost sharing plan, including cost share collection procedures.
- (10) The current appeal procedures, including procedures for notifying applicants or participants of the right to an administrative hearing.
- (11) Policies and procedures for waiting lists for CHOICE services.
- (12) Policies and procedures for approved waivers and for requesting state approved waivers.
- (13) Description of the development of the budget, as approved by the division, including the following:
 - (A) A breakdown of proposed spending on client services.
 - (B) Assessments.
 - (C) Care plan development.
 - (D) Reassessments.
 - (E) AAA administration.
 - (F) Any other appropriate costs.
- (14) The estimated number of individuals who have a high functional need that warrants exceeding the established benchmark by twice the stated amount, and the methods of managing those costs.
- (15) Procedures for selection of service providers.
- (16) Policies and procedures for case file documentation and record keeping.
- (17) Description of follow-up evaluation.
- (18) The manner in which care plans and services are to be evaluated and monitored.

(c) Each AAA shall arrange for the provision of individually needed CHOICE services through local provider agencies or individuals.

(d) An AAA may provide community and home care services to individuals in the CHOICE program if the division determines that an appropriate alternative provider agency is not available. Before an AAA can provide community and home care services to individuals in the CHOICE program, the AAA must be granted a waiver from the division for the specific services to be delivered by the AAA.

(e) Under subsection (d), an AAA submitting a waiver request to provide services shall include documentation of the unavailability of appropriate alternative providers, including, but not limited to, failure to obtain responses after advertising the availability of CHOICE funds and description of the efforts that it has exercised to solicit provider expansion into the given area or description of the efforts utilized to stimulate new provider growth.

(f) The contract period for an AAA shall be two (2) years.

(g) The AAA and all CHOICE providers shall abide by all applicable state and federal laws and regulations. (*Division of Disability, Aging, and Rehabilitative Services; 460 IAC 1-4-3; filed Dec 5, 1995, 8:30 a.m.: 19 IR 1104; readopted filed Oct 1, 2001, 3:38 p.m.: 25 IR 528*)

460 IAC 1-4-4 Participant involvement in decision making

Authority: IC 12-9-2-3; IC 12-10-10-6

Affected: IC 12-10-10; IC 16-36-1

Sec. 4. (a) An individual has the right to be involved in the formulation of the care plan and shall be involved at every stage of decision making regarding his or her care and living situation.

(b) If the case manager has reason to believe that an individual lacks the capacity to make a knowing and informed decision regarding his or her own care, the case manager shall consult with the individual's physician. The individual's physician shall make a determination regarding the individual's capacity to make a knowing and informed decision. If the physician determines that the

individual lacks the capacity to make a knowing and informed decision regarding his or her own care, the application and the care plan and any revisions must be approved and signed by the individual's CHOICE representative.

(1) An individual's CHOICE representative is any person who is legally authorized to make health care decisions on behalf of the individual under IC 16-36-1.

(2) If there is no person authorized to make health care decisions on behalf of the individual, then the individual's attending physician may act as the individual's CHOICE representative.

(c) If the individual is physically unable to sign the application or care plan, but has the capacity to make a knowing and informed decision regarding his or her own care, the individual may indicate his or her assent and authorize another to sign.

(d) Notwithstanding the fact that an individual needs a CHOICE representative, the case manager shall work and consult with the individual who will be receiving the services and shall take his or her preferences into consideration when developing a care plan, to the extent that the individual's health or safety is not threatened. (*Division of Disability, Aging, and Rehabilitative Services; 460 IAC 1-4-4; filed Dec 5, 1995, 8:30 a.m.: 19 IR 1105; readopted filed Oct 1, 2001, 3:38 p.m.: 25 IR 528*)

460 IAC 1-4-5 Assessment

Authority: IC 12-9-2-3; IC 12-10-10-6

Affected: IC 12-10-10

Sec. 5. (a) The long term care services eligibility screen developed by the division shall be used by the AAA to assess the applicant's risk of losing his or her independence and to assist in the development of a care plan if appropriate.

(b) Every applicant is eligible for an assessment. Applicants shall not be charged a fee for the assessment.

(c) The initial application and approval of the care plan must be signed by the applicant or by his or her CHOICE representative.

(d) Before each assessment, an explanation of the following must be given to the applicant:

(1) The purpose of the CHOICE assessment.

(2) The applicant's right to decide at any time to stop the process, and to refuse the offered in-home and community services.

(3) The applicant's right to appeal AAA decisions regarding eligibility or services to be provided.

(e) The AAA shall make a program eligibility determination based upon the results of the long term care services eligibility screen.

(f) When a decision is made regarding eligibility, the AAA shall notify the individual in writing of the following:

(1) Whether or not the applicant is eligible for the CHOICE program and, if eligible:

(A) that the applicant is approved for the development of a care plan; or

(B) that, due to the lack of availability of funds, the applicant will be placed on a waiting list if one is available.

(2) That the applicant has the right to appeal this eligibility decision.

(*Division of Disability, Aging, and Rehabilitative Services; 460 IAC 1-4-5; filed Dec 5, 1995, 8:30 a.m.: 19 IR 1106; readopted filed Oct 1, 2001, 3:38 p.m.: 25 IR 528*)

460 IAC 1-4-6 Care plan

Authority: IC 12-9-2-3; IC 12-10-10-6

Affected: IC 12-10-3; IC 12-10-10

Sec. 6. (a) If the applicant is eligible for CHOICE services, the AAA shall develop a care plan regardless of the applicant's income and assets.

(b) Notwithstanding subsection (a), a care plan shall not be developed in any of the following circumstances:

(1) If the applicant or his or her CHOICE representative does not want to proceed with the development of a care plan.

(2) If the applicant or his or her CHOICE representative refuses to release the information that is necessary to develop a care plan.

(3) If the AAA does not have the resources, within the available funds, to develop and carry out a care plan.

(c) All CHOICE service decisions regarding the individual shall be made in accordance with the best interests of that individual.

(d) The applicant and his or her CHOICE representative shall be involved in the development of the care plan. The applicant

or his or her CHOICE representative may decide whether family or others may participate in the development of the care plan and in any update of the care plan.

(e) A care plan shall describe each of the following:

- (1) The services needed to maintain independence.
- (2) The services already being provided by other sources.
- (3) The cost of the services still needed.
- (4) The payment sources of those services.
- (5) The no-cost or voluntary services that can be provided to meet the individual's needs.

(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 1-4-6; filed Dec 5, 1995, 8:30 a.m.: 19 IR 1106; readopted filed Oct 1, 2001, 3:38 p.m.: 25 IR 528)

460 IAC 1-4-7 Duties of the AAA

Authority: IC 12-9-2-3; IC 12-10-10-6

Affected: IC 12-10-3; IC 12-10-10

Sec. 7. (a) Each AAA shall maintain individual case records for each individual who applies for or receives services. Each individual's records shall be maintained by the AAA for a minimum of three (3) years after the individual's termination from the program or other final action.

(b) The AAA shall maintain the confidentiality of CHOICE files and records at all times. Such files and records shall not be disclosed except:

- (1) to the individual or his or her CHOICE representative;
- (2) to a person representing the individual in an appeal from a CHOICE decision;
- (3) to the division or other state agencies for purposes of securing in-home and community services;
- (4) to an adult or child protective services investigator under IC 12-10-3 and IC 31-6-11-3 [*IC 31-6 was repealed by P.L.268-1995, SECTION 17, effective July 1, 1995.*];
- (5) under court order; or
- (6) as authorized by the individual or his or her CHOICE representative.

(c) The AAA shall use CHOICE records for purposes of the CHOICE program and for the coordination of other related services only. Any disclosure of information in an individual's CHOICE file for purposes of coordinating related services shall be limited to the information that is directly relevant to and required by the other related services.

(d) CHOICE funding shall be used after all other possible payment sources have been identified and all reasonable efforts have been employed to utilize those sources.

(e) The AAA shall reduce services that are paid by CHOICE in any of the following circumstances:

- (1) When the assessed level of need diminishes as established by an updated care plan.
- (2) When the AAA's CHOICE service funds are insufficient to meet the service commitment to current participants, all reasonable efforts have been made to secure resources to avoid service reductions, the AAA has stopped performing new assessments and care plans, and the AAA has adopted a fair and equitable policy for distributing service reductions among participants.
- (3) When an individual receiving services becomes eligible under a Medicaid home and community-based services waiver and begins receiving those services that are allowable through the Medicaid program.
- (4) When a current participant becomes eligible for in-home and community services from other sources for which he or she was not previously eligible and is receiving those services.
- (5) When other resources become available in the community and the individual begins receiving those services that were not available at the time of the development of the previous care plan.
- (6) If services needed by the applicant, as determined by the assessment, would be so costly that CHOICE payment for the needed services would cause the AAA to exceed the allowable cost per individual determined by the division.

(f) The AAA shall terminate services that are paid by CHOICE in any of the following situations:

- (1) When the individual's health or personal circumstances have improved so that he or she no longer needs in-home and community-based services to maintain his or her independence in a safe, noninstitutional environment.
- (2) When the health, welfare, or safety of the participant or of others who interact with the individual can no longer be

reasonably assured.

(3) When the services being provided are detrimental to the individual's health.

(4) When the individual or his or her CHOICE representative has fraudulently obtained or misused CHOICE funded services.

(5) Upon the death of the individual receiving services.

(6) When the individual or his or her CHOICE representative refuses to comply with cost sharing under section 8 of this rule.

(7) When the individual or his or her CHOICE representative voluntarily requests termination.

(8) When the individual or his or her CHOICE representative refuses services necessary for his or her health and well-being.

(g) A participant who is found eligible for CHOICE services, but does not receive CHOICE services for a period of six (6) months due to institutionalization or lack of need, may be terminated from CHOICE services. Restoration of services, after this six (6) month period, shall be within the availability of funds and continued need for services.

(h) No CHOICE services funds shall be used to purchase real estate.

(i) No CHOICE services funds shall be used to provide care or services to an individual residing in an institution. However, funds may be used for assessment and care plan development for current residents in institutions who could return to their homes if determined to be eligible for the CHOICE program.

(j) Unless no CHOICE funds are available, the AAA shall offer initial assessments and, when appropriate, individual care plans to applicants, regardless of the applicant's income and assets.

(k) The division shall establish a maximum level of CHOICE fund expenditure per individual based on costs calculated by the division. This maximum expenditure is not to be applied monthly, but over a period of three (3) consecutive months. The dollar amount shall be published in the CHOICE guidelines and procedures. (*Division of Disability, Aging, and Rehabilitative Services; 460 IAC 1-4-7; filed Dec 5, 1995, 8:30 a.m.: 19 IR 1106; readopted filed Oct 1, 2001, 3:38 p.m.: 25 IR 528*)

460 IAC 1-4-8 Cost sharing

Authority: IC 12-9-2-3; IC 12-10-10-6

Affected: IC 12-10-11-8

Sec. 8. (a) Cost sharing is a method of cost reimbursement for those individuals who can pay all or a portion of the cost of CHOICE services rendered under IC 12-10-11-8(11).

(b) Each AAA shall comply with the cost of services formula established under IC 12-10-11-8(11).

(c) The collection of cost share shall be the responsibility of the AAA in conjunction with the service provider. (*Division of Disability, Aging, and Rehabilitative Services; 460 IAC 1-4-8; filed Dec 5, 1995, 8:30 a.m.: 19 IR 1107; readopted filed Oct 1, 2001, 3:38 p.m.: 25 IR 528*)

460 IAC 1-4-9 Conflicts of interest

Authority: IC 12-9-2-3; IC 12-10-10-6

Affected: IC 12-10-10

Sec. 9. (a) The AAA shall not contract for CHOICE services with any service provider that is owned or controlled by a member of the AAA's board of directors or a member of the AAA's staff.

(b) The AAA shall not contract for CHOICE services with any service provider that is owned or controlled by a relative (father, mother, brother, sister, uncle, aunt, husband, wife, son, daughter, son-in-law, daughter-in-law, grandmother, grandfather, grandson, or granddaughter) of any member of the AAA's board of director or executive staff, including the executive director.

(c) An AAA that wishes to contract with a service provider contrary to this section, due to the lack of an alternative provider or because it is in the best interest of the participant, must request and be granted a waiver from the division. (*Division of Disability, Aging, and Rehabilitative Services; 460 IAC 1-4-9; filed Dec 5, 1995, 8:30 a.m.: 19 IR 1108; readopted filed Oct 1, 2001, 3:38 p.m.: 25 IR 528*)

460 IAC 1-4-10 Appeals

Authority: IC 12-9-2-3; IC 12-10-10-6

Affected: IC 4-21.5-1; IC 4-21.5-3-27; IC 12-10-10

DIVISION OF DISABILITY, AGING, AND REHABILITATIVE SERVICES

Sec. 10. (a) Except as provided in subsection (b), applicants, participants, or their CHOICE representative shall have a right to appeal decisions regarding CHOICE eligibility and services if:

- (1) they are found ineligible for the CHOICE program;
- (2) they disagree with the decision either to deny a service which they believe they should receive or to discontinue or reduce a particular service which they are currently receiving; and
- (3) they believe that any decision made or action taken concerning the CHOICE services they receive was not appropriate or in their best interests.

(b) The case manager is responsible for answering questions and attempting to resolve any problems or complaints before the applicant or participant resorts to the appeal process. The case manager is also responsible for documenting all complaints and actions taken in the case file in order to create a complete record for appeal.

(c) In case of applicants or participants who lack the capacity to make a knowing and informed decision regarding their own care, their CHOICE representative may appear on their behalf throughout the appeals process.

(d) Individuals or their CHOICE representative shall comply with the following appeals process:

STEP ONE: Individuals or their CHOICE representative shall first discuss any questions, concerns, or problems regarding CHOICE services with the case manager and the case manager supervisor. This informal meeting may take place either at the agency or at the applicant's or participant's home. The applicant or participant may be accompanied by an advocate. Within five (5) working days of the date of the informal meeting, the case manager supervisor shall inform the applicant or participant in writing of the decision reached on the issues raised at the meeting. The case manager supervisor shall also inform the applicant or participant that he or she may request an agency review to the AAA's executive director or designee within eighteen (18) calendar days of the date of the case manager supervisor's decision.

STEP TWO: Agency review as follows:

(A) The executive director or his or her designee shall conduct the agency review at the applicant's or participant's home or at the AAA office, whichever is more convenient for the applicant or participant. The applicant or participant, his or her advocate (if desired), and the case manager or the case manager's supervisor shall attend the review.

(B) Applicants and participants shall be given the opportunity to testify, present supporting materials, and explain why they disagree with the action or decision and what they would view as an appropriate alternative. The case manager or case manager supervisor may testify and explain the reasons for the decision or action taken.

(C) Immediately following the review, the executive director or designee conducting the review shall consider the comments of the applicant or participant, his or her advocate, and the case manager or the case manager's supervisor.

(D) Within five (5) working days, the executive director, or designee after consulting with the executive director, shall prepare the agency's final decision, in writing, including findings of fact and the specific reason for the decision. The applicant or participant and his or her advocate, if any, shall each be sent a copy of the decision by registered or certified mail, return receipt requested. The decision shall inform the applicant or participant of his or her right to have an administrative hearing under STEP THREE if dissatisfied with the agency's final decision.

STEP THREE: Administrative hearing as follows:

(A) If an applicant or participant is dissatisfied with the decision reached at the agency review, then he or she may appeal the decision by requesting an administrative hearing. The applicant, participant, or CHOICE representative shall make the request for an administrative hearing, in writing, including a statement of the issues the applicant or participant wishes reviewed. The request shall be signed and dated. The written request shall be sent to the deputy director of the division, bureau of aging and in-home services within eighteen (18) days of the date of the decision from the agency review.

(B) Administrative hearings shall be conducted by administrative law judges (ALJs), or hearing officers, appointed by the DDARS director. The ALJ shall notify the applicant or participant and all involved persons of the date, time, and location of the hearing at least five (5) working days in advance. The applicant or participant shall be notified by registered or certified mail, return receipt requested. The AAA shall forward all written case documentation to the ALJ prior to the date of the hearing. The hearing shall be conducted in accordance with IC 4-21.5-1.

(C) Immediately, but no later than five (5) days following the hearing, the ALJ shall prepare the proposed decision, including a report of the findings of fact and the reasons for the decision based on those findings of fact. In accordance with IC 4-21.5-3-27, the ALJ shall forward the proposed decision to the DDARS director. A copy of the proposed decision shall be sent to the AAA, the applicant or participant, and his or her advocate, if any, by registered or certified

mail, return receipt requested.

(D) The director of the division shall either affirm, modify, or dissolve the ALJ's proposed decision. The AAA, the applicant or participant, and his or her advocate shall be notified of the director's final order by registered or certified mail, return receipt requested.

(e) If a participant appeals a decision that terminates any service that is already being provided, then the service in question will usually be continued until the appeal is resolved, unless:

(1) the services would be harmful to the participant; or

(2) the services violate state or federal law or regulations and internal policies of the CHOICE program or the division.

(f) An applicant or participant may bring to his or her informal review, agency review, and administrative hearing any person he or she wishes to be present, including legal counsel. The division shall not pay for legal counsel for an applicant or participant during the appeal process.

(g) Interpreter services will be made available to assist the deaf or non-English speaking person upon request. Reader services will be made available to assist the blind person upon request. However, if the applicant or participant requires these services for participation in the agency review or administrative hearing, the applicant or participant, prior to the date of the review, shall discuss the arrangements with the case manager.

(h) The AAA shall have in place at all times an appeals process that complies with this section. (*Division of Disability, Aging, and Rehabilitative Services; 460 IAC 1-4-10; filed Dec 5, 1995, 8:30 a.m.: 19 IR 1108; readopted filed Oct 1, 2001, 3:38 p.m.: 25 IR 528*)

460 IAC 1-4-11 Guidelines and procedures

Authority: IC 12-10-10-6

Affected: IC 12-10-10

Sec. 11. (a) CHOICE guidelines and procedures shall be established by the division for the effective management of the program. These shall be in the form of a published manual.

(b) Revisions of the CHOICE guidelines and procedures may occur in the following circumstances:

(1) As necessary, as determined by the division, to provide clarity and consistency of program activities.

(2) CHOICE guidelines and procedures shall be open for comment at least annually.

(3) Revisions to the CHOICE guidelines and procedures may be made by the division after consideration of consumer needs, AAA recommendations, state law, division policy, or CHOICE board recommendations.

(4) The division shall provide notice to the public of revisions in guidelines and procedures by publications in the CHOICE board agenda posted before each meeting in the office of the division, bureau of aging and in-home services. Comments and recommendations for revision may be given during an official CHOICE board meeting.

(*Division of Disability, Aging, and Rehabilitative Services; 460 IAC 1-4-11; filed Dec 5, 1995, 8:30 a.m.: 19 IR 1109; readopted filed Oct 1, 2001, 3:38 p.m.: 25 IR 528*)

Rule 5. Adult Guardianship Services Program

460 IAC 1-5-1 Purpose

Authority: IC 12-9-2-3; IC 12-10-7-7

Affected: IC 12-10-7

Sec. 1. The purpose of this rule is to implement the adult guardianship services program authorized by IC 12-10-7, which includes the provision of full guardianships and least restrictive services to indigent adults who are unable to care for themselves properly or manage their own affairs without assistance due to certain incapacities or developmental disabilities. Program services include the identification and evaluation of adults who may need adult guardianship services. (*Division of Disability, Aging, and Rehabilitative Services; 460 IAC 1-5-1; filed Jul 25, 1995, 12:00 p.m.: 18 IR 3394; readopted filed Oct 1, 2001, 3:38 p.m.: 25 IR 528*)

460 IAC 1-5-2 Definitions

Authority: IC 12-9-2-3; IC 12-10-7-7

Affected: IC 12-9-1-1; IC 12-10-1-1; IC 12-10-7; IC 12-10-14-2; IC 16-36-1; IC 29-3-8; IC 30-5

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

- (1) "Adult guardianship services" includes full guardianship and least restrictive services.
- (2) "BAIHS" or "bureau" refers to the bureau of aging and in-home services established under IC 12-10-1-1, which monitors and coordinates the adult guardianship services program.
- (3) "Division" or "DDARS" refers to the division of disability, aging, and rehabilitative services as established under IC 12-9-1-1.
- (4) "Dual signature checking account" means an account that allows a recipient to write checks on his or her own but requires another person's signature before the checks are valid.
- (5) "Guardian" means an individual or organization named by order of a court to exercise any or all powers specified in IC 29-3-8.
- (6) "Incapacitated individual" means an individual as defined in IC 12-10-7-1.
- (7) "Indigent adult" means an individual as defined in IC 12-10-7-2.
- (8) "Least restrictive" means a course of action that allows the individual to live, learn, and work in a setting that places as few limits on the individual's rights and personal freedoms as appropriate to meet the needs of the individual.
- (9) "Least restrictive services" refers to those services specified in IC 12-10-7-8.
- (10) "Protected person" means an individual for whom a guardian has been appointed.
- (11) "Provider" means an entity designated by the division under section 3 of this rule.
- (12) "Recipient" means an individual receiving guardianship or least restrictive services.
- (13) "Region" means a population or geographic area identified in a provider's adult guardianship services plan and approved by the division.
- (14) "Representative" means any person who is legally authorized to make decisions on behalf of another under IC 16-36-1, or a power of attorney under IC 30-5.
- (15) "Representative payee" means an individual or organization as defined in IC 12-10-14-2.

(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 1-5-2; filed Jul 25, 1995, 12:00 p.m.: 18 IR 3394; readopted filed Oct 1, 2001, 3:38 p.m.: 25 IR 528)

460 IAC 1-5-3 Selection of providers

Authority: IC 12-9-2-3; IC 12-10-7-7

Affected: IC 12-10-7-8; IC 29-3

Sec. 3. (a) The division shall contract in writing with the designated adult guardianship services provider.

(b) In order to be designated as an adult guardianship services provider, an interested agency shall submit a proposal and an adult guardianship services plan to the division. The plan shall contain the following:

- (1) The population or geographic area to be served.
- (2) Qualifications and policies for the selection of employees.
- (3) The referral and intake process.
- (4) The assessment and reassessment process.
- (5) Functions that volunteers may perform in the program.
- (6) Policies and procedures for recruiting, training, and assigning volunteers.
- (7) Policies and procedures for case file documentation and record keeping.
- (8) A description of the manner in which ongoing cases will be evaluated and monitored.
- (9) The criteria by which program activities will be evaluated.
- (10) Policies and procedures for prioritization of eligible individuals on waiting lists for adult guardianship services.
- (11) A description of the development of the budget, including a breakdown of proposed spending on adult guardianship services, assessments, service plan development, reassessments, provider administration, and any other appropriate costs.
- (12) Procedures to avoid a conflict of interest for the provider in providing adult guardianship services to each recipient.

(c) The provider shall perform local administrative functions, including, but not limited to, the following:

- (1) Budgeting.
- (2) Oversight.
- (3) Monitoring.
- (4) Quality assurance.
- (5) Submission of fiscal claims to the division.
- (6) Case intake, assessment, and plan development.

(d) The provider shall have an employee devoted at least halftime to the adult guardianship services program as coordinator.

The adult guardianship services coordinator shall be free from conflict of interest and shall have the following minimum qualifications:

- (1) A bachelor's degree from a four (4) year accredited college or university. Two (2) years of experience serving as guardian to an individual over eighteen (18) years of age under IC 29-3 may substitute for one (1) year of college or university training.
- (2) Two (2) years of experience in social services.
- (3) One (1) year of management experience.

(e) The board of directors of the provider shall recruit and appoint from the community an adult guardianship services committee of at least five (5) persons to provide advice to the employees and to the board of directors on action pertaining to adult guardianship services and program activities.

(f) The adult guardianship services committee must include, but is not limited to, at least one (1) representative from each of the following categories:

- (1) An attorney or financial professional knowledgeable about guardianship issues.
- (2) A psychiatrist, clinical psychologist, or psychiatric social worker.
- (3) A developmental disabilities specialist.
- (4) A person sixty (60) years of age or older, or a representative of older adults knowledgeable about guardianships.
- (5) One (1) member of the board of directors. Except for one (1) member from the board of directors, an individual appointed to the adult guardianship services committee shall not be a member of the board of directors or employee of the provider.

(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 1-5-3; filed Jul 25, 1995, 12:00 p.m.: 18 IR 3395; readopted filed Oct 1, 2001, 3:38 p.m.: 25 IR 528)

460 IAC 1-5-4 Participant involvement in decision making

Authority: IC 12-9-2-3; IC 12-10-7-7

Affected: IC 12-10-7-8

Sec. 4. An individual referred to the provider or the individual's representative shall be involved in the formation of the service plan and shall be consulted at every stage of decision making. *(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 1-5-4; filed Jul 25, 1995, 12:00 p.m.: 18 IR 3396; readopted filed Oct 1, 2001, 3:38 p.m.: 25 IR 528)*

460 IAC 1-5-5 Assessment

Authority: IC 12-9-2-3; IC 12-10-7-7

Affected: IC 12-10-7

Sec. 5. (a) The provider shall use the adult guardianship assessment instrument developed by the division to assess whether an individual referred to the provider is indigent or incapacitated, or both, and to assist in the development of a service plan to meet the individuals' needs.

(b) Within the availability of funds, every individual who is referred to the provider is eligible for an initial assessment. Individuals shall not be charged a fee for the initial assessment. *(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 1-5-5; filed Jul 25, 1995, 12:00 p.m.: 18 IR 3396; readopted filed Oct 1, 2001, 3:38 p.m.: 25 IR 528)*

460 IAC 1-5-6 Service plan

Authority: IC 12-9-2-3; IC 12-10-7-7

Affected: IC 12-10-7-8

Sec. 6. (a) If the individual referred to the provider is determined through the assessment to be eligible for adult guardianship services, the provider shall formulate and adopt an individualized service plan that provides the least restrictive service.

- (b) The service plan shall describe each of the following:
- (1) The individual's primary difficulties.
 - (2) The reason the individual was referred to the provider.
 - (3) The services needed and referrals made to obtain those services.
 - (4) Short term and long term objectives.
 - (5) Rationale for services.

(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 1-5-6; filed Jul 25, 1995, 12:00 p.m.: 18 IR 3396; readopted filed Oct 1, 2001, 3:38 p.m.: 25 IR 528)

460 IAC 1-5-7 Specific tasks of the provider

Authority: IC 12-9-2-3; IC 12-10-7-7

Affected: IC 12-10-7-8; IC 29-3

Sec. 7. The provider shall perform the following duties:

- (1) Provide adequate physical security of confidential data.
- (2) Maintain a file for each protected person that documents any and all actions taken.
- (3) Participate in contract performance reviews as requested by BAIHS.
- (4) Develop program guidelines, policies, and procedures that conform to all applicable state and federal laws and BAIHS policies.
- (5) Keep records and make reports as required by BAIHS and the court.
- (6) Recruit and train appropriate volunteers as guardian assistants.
- (7) Provide guidance and oversight to guardian assistants in the performance of their assigned duties.
- (8) Recruit attorneys to provide legal services necessary to obtain guardianship services, preferably on a pro bono or reduced fee basis.
- (9) Assist attorneys, as appropriate, in preparing material for legal presentation to the court.
- (10) Assess each referred person to determine eligibility for guardianship or least restrictive services.
- (11) Assure active participation of the adult guardianship services committee in determining the necessity of a guardianship or least restrictive service for each assessed individual.
- (12) Perform all duties in accordance with IC 29-3 and any court order.
- (13) Assess each recipient's income and disburse payment as appropriate for recipients receiving representative payee services.
- (14) Maintain a separate account for each recipient whose funds are handled by the provider.
- (15) Perform tasks associated with handling recipient funds in a manner that assures provider fiscal accountability.
- (16) Monitor and evaluate all program activities on an ongoing basis.

(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 1-5-7; filed Jul 25, 1995, 12:00 p.m.: 18 IR 3396; readopted filed Oct 1, 2001, 3:38 p.m.: 25 IR 528)

460 IAC 1-5-8 Provider policy conformance

Authority: IC 12-9-2-3; IC 12-10-7-7

Affected: IC 12-10-7-8

Sec. 8. (a) The provider shall coordinate with service providers in the area to obtain necessary direct services for the recipient. The provider shall not provide any other service to the recipient directly except guardianship and least restrictive services.

(b) If the direct services are not available from another provider, or if there are extraordinary circumstances making the provision of those services by the provider preferable, the provider must request a waiver from the division. The division may grant a waiver if there are no other providers available and willing to provide the direct services.

(c) The provider shall use standardized adult guardianship services program forms provided by the BAIHS.

(d) Where the assessment of an individual indicates the need for guardianship, the provider shall seek guardianship appointments from the court and may serve as the guardian. The provider shall provide least restrictive services.

(e) The provider shall not subcontract for the provision of guardianship or any least restrictive service or in any way delegate responsibility for any guardianship or least restrictive service. (*Division of Disability, Aging, and Rehabilitative Services; 460 IAC 1-5-8; filed Jul 25, 1995, 12:00 p.m.: 18 IR 3396; readopted filed Oct 1, 2001, 3:38 p.m.: 25 IR 528*)

460 IAC 1-5-9 Confidentiality

Authority: IC 12-9-2-3; IC 12-10-7-7

Affected: IC 12-10-7-8

Sec. 9. (a) The provider shall receive and maintain all information, including, but not limited to, recipient information in a confidential manner.

(b) All recipient information shall remain confidential, and access shall be limited to authorized employees of the provider. (*Division of Disability, Aging, and Rehabilitative Services; 460 IAC 1-5-9; filed Jul 25, 1995, 12:00 p.m.: 18 IR 3397; readopted filed Oct 1, 2001, 3:38 p.m.: 25 IR 528*)

460 IAC 1-5-10 Conflict of interest

Authority: IC 12-9-2-3; IC 12-10-7-7

Affected: IC 12-10-7-8

Sec. 10. (a) The provider shall avoid even the appearance of a conflict of interest or impropriety when dealing with the needs of the recipient. Impropriety or conflict of interest refers to a situation in which the provider has a personal or financial interest, or both, that may be perceived as self-serving or adverse to the position or the best interest of the recipient.

(b) Employees of the provider shall be free from conflict of interest.

(c) The provider's adult guardianship services program volunteers shall be free from conflict of interest.

(d) The provider's adult guardianship services program advisory committee shall have a written plan for resolving conflicts of interest. (*Division of Disability, Aging, and Rehabilitative Services; 460 IAC 1-5-10; filed Jul 25, 1995, 12:00 p.m.: 18 IR 3397; readopted filed Oct 1, 2001, 3:38 p.m.: 25 IR 528*)

Rule 6. Alzheimer's Disease and Related Senile Dementia Program

460 IAC 1-6-1 Purpose

Authority: IC 12-9-2-3; IC 12-10-4-6

Affected: IC 12-10-4

Sec. 1. The purpose of this rule is to establish criteria for the award of grants to be used for Alzheimer's disease and related senile dementia activities and to govern respite care pilot projects established under the Alzheimer's disease and related senile dementia program. (*Division of Disability, Aging, and Rehabilitative Services; 460 IAC 1-6-1; filed Aug 17, 1995, 8:30 a.m.: 19 IR 37; readopted filed Oct 1, 2001, 3:38 p.m.: 25 IR 528*)

460 IAC 1-6-2 Definitions

Authority: IC 12-9-2-3; IC 12-10-4-6

Affected: IC 12-9-1-1; IC 12-10-4; IC 12-10-5-2; IC 12-10-10-1

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

(1) "Adult day care services" refers to the provision of a comprehensive structured program in a protective setting during the daytime and early evening hours.

(2) "Alzheimer's disease" refers to a progressive degenerative disease that attacks the brain and results in impaired memory, thinking, and behavior as diagnosed by a qualified physician.

(3) "Alzheimer's disease and related senile dementia program" or "Alzheimer's program" refers to the program established under IC 12-10-4.

(4) "Dementia" or "related senile dementia" refers to a group of symptoms identified by a qualified physician, including, but

not limited to, a decline in intellectual functioning that is severe enough to interfere with the ability of an individual diagnosed with related senile dementia to perform routine activities.

(5) "Division" refers to the division of disability, aging, and rehabilitative services established under IC 12-9-1-1.

(6) "Institutional care" refers to continuous, twenty-four (24) hour residential care provided by facilities such as the following:

(A) Hospitals and nursing facilities.

(B) Intermediate care facilities for the mentally retarded.

(C) Community residential facilities for developmentally disabled.

(D) State owned and operated institutions.

(7) "Respite care services" refers to those services provided temporarily or periodically to an individual diagnosed with Alzheimer's disease or related senile dementia, in the absence of the usual unpaid caregiver, and including services provided in the home or on an overnight basis in an approved out-of-home setting such as a nursing facility.

(8) "Task force" refers to the Alzheimer's disease and related senile dementia task force established under IC 12-10-5-2.

(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 1-6-2; filed Aug 17, 1995, 8:30 a.m.: 19 IR 37; readopted filed Oct 1, 2001, 3:38 p.m.: 25 IR 528)

460 IAC 1-6-3 Grants

Authority: IC 12-9-2-3; IC 12-10-4-6

Affected: IC 12-10-4-1; IC 12-10-4-5

Sec. 3. (a) The division may make grants available for the following:

(1) Training and development of training materials for individuals listed in IC 12-10-4-1 who participate or assist in the care or treatment of individuals diagnosed with Alzheimer's disease or related senile dementia.

(2) Pilot programs or services, including respite care, adult day care, and other services necessary to prevent premature institutionalization of individuals with Alzheimer's disease and related senile dementia.

(3) Studies or research related to Alzheimer's disease and related senile dementia.

(4) Education or development of educational materials for individuals listed in IC 12-10-4-1 who participate or assist in the care or treatment of individuals diagnosed with Alzheimer's disease or related senile dementia.

(5) Other projects or services necessary to reduce or prevent premature institutionalization of individuals diagnosed with Alzheimer's disease or related senile dementia.

(b) Grants shall be available only to those entities who meet the requirements specified in IC 12-10-4-5(a).

(c) The division shall announce the availability of grant funds. Any announcement shall include, but not be limited to, the following:

(1) The purpose for which the funding is available.

(2) A description of the application process, including deadlines for submission and format for applications.

(3) A requirement for an evaluation of the project or services for which funding is available.

(4) A requirement for a final written report regarding the activities of the project or services for which funding is available.

(d) The division shall select among applicants for grant funds based on the criteria specified in section 4 of this rule. *(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 1-6-3; filed Aug 17, 1995, 8:30 a.m.: 19 IR 37; readopted filed Oct 1, 2001, 3:38 p.m.: 25 IR 528)*

460 IAC 1-6-4 Selection criteria

Authority: IC 12-9-2-3; IC 12-10-4-6

Affected: IC 12-10-4-5

Sec. 4. Application for grants shall be reviewed and selected based on the following criteria:

(1) Timely submission of all information required in the division's announcement of available grant funds.

(2) Clear definition of the problems or issues to be addressed through the project.

(3) Project or service goals specified in the application.

(4) Statement of specific and measurable objectives directed at reaching the stated goals.

(5) Statement of strategies to be used to meet each objective.

- (6) Identification of resources, other than grant funds, including a plan for obtaining other resources for continuation of the project after the grant period, when applicable.
- (7) Attention to the needs of underserved groups identified in the application.
- (8) Appropriate budget information, using the budget form provided by the division.
- (9) Plan for evaluating outcomes of the project.
- (10) Letters of support.

(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 1-6-4; filed Aug 17, 1995, 8:30 a.m.: 19 IR 38; readopted filed Oct 1, 2001, 3:38 p.m.: 25 IR 528)

460 IAC 1-6-5 Consultation

Authority: IC 12-9-2-3; IC 12-10-4-6

Affected: IC 12-10-4-3

Sec. 5. The division shall consult with the following entities, as necessary, in developing and evaluating activities and services for which grant funds are available under section 3 of this rule:

- (1) The division of mental health.
- (2) The state department of health.
- (3) The task force.
- (4) Other organizations knowledgeable about Alzheimer's disease and related senile dementia, or who have an interest in the welfare of individuals with Alzheimer's disease and related senile dementia.

(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 1-6-5; filed Aug 17, 1995, 8:30 a.m.: 19 IR 38; readopted filed Oct 1, 2001, 3:38 p.m.: 25 IR 528)

Rule 7. Indiana Long Term Care Ombudsman Program

460 IAC 1-7-1 Purpose

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-10-13-17

Affected: IC 12-10-13

Sec. 1. The purpose of this rule is to implement the long term care ombudsman program authorized by IC 12-10-13-17 and 42 U.S.C. 3058g which includes identifying, receiving, investigating, resolving, or attempting to resolve complaints and concerns regarding the health, safety, welfare, or rights of residents. *(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 1-7-1; filed Mar 6, 2000, 7:51 a.m.: 23 IR 1640)*

460 IAC 1-7-2 Definitions

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-10-13-17

Affected: IC 12-9-1-1; IC 12-10-3; IC 12-10-13-3.3; IC 16-18-2-167

- Sec. 2. (a) The definitions in this section apply throughout this rule.
- (b) "Adult protective services program" means the program established under IC 12-10-3.
 - (c) "Adult protective services unit" means the unit defined in 460 IAC 1-2-2.
 - (d) "Conflict of interest" means that other interests intrude upon, interfere with, threaten to negate, or give the appearance of interfering with or negating the ability of the state ombudsman, state level staff of the office, local ombudsmen, volunteers, or local ombudsman entities to advocate without compromise on behalf of residents of long term care facilities. It also means any situation that would create a reasonable appearance of a conflict of interest.
 - (e) "Consult" or "consultations" means to share information with and to keep apprised.
 - (f) "Dedesignation" means revocation of the designation of a representative of the office or a local ombudsman entity by the state ombudsman.
 - (g) "Division" means the division of disability, aging, and rehabilitative services established in IC 12-9-1-1.
 - (h) "Financial interest" means the following:

- (1) Any ownership or investment interest represented by equity, debt, or other financial relationship in a long term care facility, long term care service, or home care organization; or
- (2) The right to receive, directly or indirectly, remuneration, in cash or in kind, under a compensation agreement with an owner or operator of a long term care facility or home care organization.
- (i) "Health facility" or "nursing facility" means a facility as defined in IC 16-18-2-167.
- (j) "Identifying information" means the name, age, address, social security number, telephone number, name of facility, diagnosis, physical disability, or any other information that may be used to identify the individual or individuals to whom the complaint refers, or the individual or individuals making the complaint.
- (k) "Immediate family member" means a spouse, parent, stepparent, brother, sister, stepbrother, stepsister, child, or stepchild.
- (l) "Legal representative" has the meaning specified in IC 12-10-13-3.3.
- (m) "Local ombudsman" means an individual designated by the state ombudsman under section 8 of this rule.
- (n) "Local ombudsman entity" means an entity designated by the state ombudsman under section 5 of this rule as the entity to house the local ombudsman.
- (o) "Long term care facility" or "facility" means a health facility or an adult care home.
- (p) "Office" means office of the state long term care ombudsman established under IC 12-10-13.
- (q) "Officer" means the president, vice-president, chairperson, director, executive director, or chief executive officer of an agency or entity.
- (r) "Person" means an association, a corporation, a limited liability company, an individual, a governmental agency, or a partnership.
- (s) "Program" means the long term care ombudsman program authorized under IC 12-10-13 and 42 U.S.C. 3058g.
- (t) "Program records" means the following:
 - (1) The medical, financial, and social records of residents or clients obtained for the purpose of identifying, investigating, or attempting to resolve a complaint or concern by or on behalf of residents or clients.
 - (2) Records obtained which are necessary for the investigation of a complaint by or on behalf of residents or clients.
 - (3) Administrative records, policies, and documents of long term care facilities and home care service organizations obtained during the process of investigating or attempting to resolve a complaint or concern.
 - (4) Any data relating to complaints and conditions in long term care facilities or home care organizations.
 - (5) Any other records compiled and maintained by representatives of the office in carrying out their duties pursuant to this rule.
- (u) "Representative of the office" means the state ombudsman, other state level ombudsman staff, local ombudsmen, or volunteer ombudsmen.
- (v) "Resident" means the resident of a long term care facility.
- (w) "State long term care ombudsman" or "state ombudsman" means an individual appointed by the director of the division. (*Division of Disability, Aging, and Rehabilitative Services; 460 IAC 1-7-2; filed Mar 6, 2000, 7:51 a.m.: 23 IR 1640*)

460 IAC 1-7-3 Appointment of the state long term care ombudsman; qualifications

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-10-13-17

Affected: IC 12-10-13-8; IC 12-10-13-10

Sec. 3. (a) The director of the division shall appoint an individual as state long term care ombudsman to direct the office on a full-time basis.

(b) An individual appointed as state ombudsman shall have the following qualifications:

- (1) A bachelor's degree.
- (2) Experience in the field of gerontology or long term care. An individual has experience in the field of gerontology if he or she has at least one (1) year working experience in a setting or in an agency, public or private, that provides directly or arranges for the provision of services to older individuals.
- (3) Knowledge of laws and regulations pertaining to long term care, including Title XVIII and Title XIX of the Social Security Act and the legal system serving older adults, persons with disabilities, and low-income individuals.
- (4) Experience with dispute resolution techniques, including, but not limited to, investigation, mediation, and negotiation. This requirement is satisfied if the individual has had training in dispute resolution techniques.

(5) Expertise and familiarity in the fields of long term care and advocacy. This requirement is satisfied if the individual has at least one (1) year working experience in an agency, public or private, that represents the interests or rights of vulnerable individuals.

(6) No conflict of interest as required by this rule.

(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 1-7-3; filed Mar 6, 2000, 7:51 a.m.: 23 IR 1641)

460 IAC 1-7-4 Duties of the state ombudsman; independence

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-10-13-17

Affected: IC 12-10-1-3; IC 12-10-1-4; IC 12-10-13

Sec. 4. (a) The state ombudsman shall, in consultation with the director of the state unit on aging, direct the office of the long term care ombudsman program.

(b) The state ombudsman shall, personally or through representatives of the office, perform the following duties:

(1) Identify, investigate, resolve, or attempt to resolve complaints by or on behalf of residents and clients.

(2) Provide services to protect the health, safety, welfare, and rights of residents, including, but not limited to:

(A) Information and referral services.

(B) Education and training for residents, their family members, staff of long term care facilities, and the public. These services may be provided by dissemination of written information, presentations, workshops, individual meetings with residents or their family members, or any other appropriate means.

(3) Inform residents, family members, long term care facility staff, and the public about ombudsman program services, how residents can access those services, or how services can be accessed on behalf of residents.

(4) Inform residents about the means of obtaining services provided through providers of long term care services or their representatives, public agencies, and health and social service agencies.

(5) Ensure that residents statewide have regular and timely access to representatives of the office through resident visits.

(6) Ensure that complainants, clients, and residents receive timely responses to complaints and requests for assistance.

(7) Advocate on behalf of residents in the following nonexclusive ways:

(A) Identify problems affecting residents at the facility, local, state, or national levels and attempt to resolve those problems.

(B) Identify problems in the long term care system and advocate for changes to that system.

(C) Represent the interests of residents before governmental agencies.

(D) Analyze, comment on, provide public testimony, and monitor the development and implementation of proposed or existing federal, state, and local laws, regulations, government policies, and actions that affect residents.

(E) Facilitate public comment.

(8) Seek administrative, legal, and other remedies to protect the health, safety, welfare, and rights of residents.

(9) Designate and dedesignate local ombudsman entities and representatives of the office in accordance with this rule.

(10) Consult in the development of the contract between the division and the local ombudsman entity regarding that portion of any contract related to the ombudsman program.

(11) Direct the program related activities of the local ombudsmen in consultation with the local ombudsman entity. The state ombudsman shall, in consultation with the local ombudsman entity, provide oversight to the work of the local ombudsmen.

(12) Provide administrative and technical assistance to representatives of the office and local ombudsman entities.

(13) Monitor and evaluate the activities and performance of representatives of the office and local ombudsman entities in accordance with this rule.

(14) Consult with the following agencies or programs:

(A) The Indiana state department of health.

(B) The adult protective services program.

(C) The Indiana protection and advocacy services.

(D) Other state agencies and programs whose duties and services affect residents.

(15) Provide technical support for the development and maintenance of resident and family councils.

(16) Promote the development of citizen organizations to participate in the program.

(17) Prepare an annual report in accordance with the Older Americans Act.

(18) Ensure that the confidentiality of program records is maintained in accordance with this rule.

(19) Identify duties to be performed by volunteer ombudsmen in consultation with the local ombudsman, local ombudsman entity, and the division.

(20) Perform other duties the federal commissioner on aging determines to be appropriate.

(c) The state ombudsman shall report directly to the director of the state unit on aging. The state ombudsman shall be independent in all actions, but shall consult with the director of the state unit on aging or his or her designee to ensure identification and resolution of agency-wide issues, programmatic and fiscal integrity, and coordination of efforts. (*Division of Disability, Aging, and Rehabilitative Services; 460 IAC 1-7-4; filed Mar 6, 2000, 7:51 a.m.: 23 IR 1642*)

460 IAC 1-7-5 Local ombudsman entity; designation; term; dedesignation; notice

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-10-13-17

Affected: IC 12-10-13-4.5; IC 12-10-13-13

Sec. 5. (a) The state ombudsman may designate local ombudsman entities to carry out the duties specified in section 6 of this rule. The state ombudsman shall consult with the division in the selection of a local ombudsman entity.

(b) An entity applying for designation must:

(1) be a public or private nonprofit entity;

(2) have demonstrated capability to carry out duties of the ombudsman program, such as experience in advocating for the individual and collective rights of vulnerable individuals; and

(3) be free of conflicts of interest as required by this rule.

(c) An entity shall be designated for a period not to exceed two (2) years.

(d) The state ombudsman may dedesignate a local ombudsman entity at any time, for cause, which may include, but is not limited to, the following:

(1) Failure to satisfactorily perform the duties of the entity as specified in section 6 of this rule.

(2) Failure to report or correct a conflict of interest.

(3) Violation of confidentiality provisions required under state or federal statutes or regulations, this rule, or office policy.

(e) The state ombudsman shall give written notice of the dedesignation to the local ombudsman entity. The notice shall include:

(1) reasons for the dedesignation;

(2) effective date of the dedesignation; and

(3) appeal rights.

(*Division of Disability, Aging, and Rehabilitative Services; 460 IAC 1-7-5; filed Mar 6, 2000, 7:51 a.m.: 23 IR 1643*)

460 IAC 1-7-6 Responsibilities of local ombudsman entity

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-10-13-17

Affected: IC 12-10-13

Sec. 6. The local ombudsman entity shall:

(1) assure continual ombudsman coverage by a designated and certified ombudsman;

(2) remain free of conflicts of interest as defined in this rule;

(3) provide nonombudsman program related supervision, i.e., attendance, appropriate office behavior, etc.;

(4) provide space, phone, computer access, utilities, supplies, postage, mail service, and other program support;

(5) inform the office prior to dismissal of a local ombudsman for reasons unrelated to the duties of the office;

(6) adhere to all the state and federal laws, regulations, and rules governing the Indiana long term care ombudsman program;

(7) not give the local ombudsman other job assignments that conflict with ombudsman responsibilities; and

(8) provide confidentiality to the state ombudsman, to the local ombudsman, to the office, to residents, to families, and to anyone filing a complaint on behalf of a resident.

(*Division of Disability, Aging, and Rehabilitative Services; 460 IAC 1-7-6; filed Mar 6, 2000, 7:51 a.m.: 23 IR 1643*)

460 IAC 1-7-7 Responsibilities of state ombudsman as to local ombudsman entity

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-10-13-17

Affected: IC 12-10-13

Sec. 7. The state ombudsman shall:

- (1) provide programmatic direction, instruction, guidance, and assistance to the local ombudsman entity;
- (2) assess the local ombudsman entity;
- (3) assess the local ombudsman's performance in consultation with the local ombudsman entity; and
- (4) involve the local ombudsman entity in program planning and policy development.

(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 1-7-7; filed Mar 6, 2000, 7:51 a.m.: 23 IR 1643)

460 IAC 1-7-8 Local ombudsman; designation; exemption; certification; dedesignation; notice

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-10-13-17

Affected: IC 12-10-13-4.5; IC 12-10-13-13

Sec. 8. (a) The state ombudsman may designate a local ombudsman as representative of the office to carry out the duties specified in section 9 of this rule. If the local ombudsman is housed in a local ombudsman entity, the state ombudsman shall consult with the local ombudsman entity in the designation process.

(b) In order to be designated as a local ombudsman, an individual shall meet the following criteria:

(1) Have a bachelor's degree in counseling, gerontology, nursing, psychology, sociology, social work, physical, occupational, or recreational therapy, special education, rehabilitation counseling, or other human services field or have at least four (4) years work experience in the field of long term care. Accredited college training in the areas listed above may substitute for the required work experience on a year-for-year basis.

(2) Successfully complete the Indiana long term care ombudsman program training and certification program.

(3) Be free of conflicts of interest as required by this rule.

(c) An individual serving as local ombudsman before the effective date of this rule shall be exempt from the requirements in this section except those referring to conflicts of interest.

(d) Each local ombudsmen [*sic.*, *ombudsman*] designated in accordance with subsection (a) shall be certified by the state ombudsman to perform the duties in section 9 of this rule for a period not to exceed two (2) years.

(e) In order to be recertified, a local ombudsman shall:

(1) satisfactorily perform the duties specified in section 9 of this rule;

(2) remain free of conflicts of interest as required by this rule; and

(3) satisfactorily meet any additional requirements specified by law or regulation.

(f) The state ombudsman may, at any time, dedesignate a local ombudsman for cause. If the local ombudsman is housed in a local ombudsman entity, the state ombudsman shall consult with the local ombudsman entity in the dedesignation process. Cause for dedesignation includes, but is not limited to, the following:

(1) Failure of the local ombudsman to follow state and federal laws, regulations, and this rule.

(2) Failure to satisfactorily perform the duties specified in section 9 of this rule.

(3) Failure to follow the direction and supervision of the state ombudsman or appropriate state level office staff.

(4) Taking any action which endangers the health, safety, welfare, or rights of residents or clients.

(5) Failure to disclose or correct a conflict of interest.

(g) The state ombudsman shall give written notice of the dedesignation to the local ombudsman. The notice shall include:

(1) reasons for the dedesignation;

(2) effective date of the dedesignation; and

(3) appeal rights.

(h) The state ombudsman must inform the local ombudsman entity of the decision not to recertify or to dedesignate a local ombudsman prior to issuing the written notice to the local ombudsman. *(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 1-7-8; filed Mar 6, 2000, 7:51 a.m.: 23 IR 1643)*

460 IAC 1-7-9 Duties of the local ombudsman

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-10-13-17

Affected: IC 12-10-13

Sec. 9. The local ombudsman shall perform the following duties:

- (1) Identify, investigate, resolve, or attempt to resolve complaints made by or on behalf of residents that relate to actions, inactions, or decisions that may adversely affect the health, safety, welfare, or rights of residents. The local ombudsman shall inform the complainant, the resident, or their legal representatives of the findings of an investigation or the reasons why a complaint cannot be investigated.
- (2) Provide services to protect the health, safety, welfare, and rights of long term care facility residents, including, but is not limited to:
 - (A) information and referral services; and
 - (B) education and training for residents, their family members, staff of long term care facilities, and the public.
- (3) Provide residents regular and timely access to the program through frequent resident visits.
- (4) Respond to complaints and requests for assistance.
- (5) Support the development and maintenance of resident and family councils and assist in addressing council concerns.
- (6) Inform residents, their family members, citizens' organizations, the public, and long term care facility staff about the ombudsman program.
- (7) Advocate on behalf of residents in the following nonexclusive ways:
 - (A) Identify problems affecting residents at the facility, local, state, or national levels and attempt to resolve those problems.
 - (B) Identify problems in the long term care system and advocate for changes to that system.
 - (C) Represent the interests of residents before government agencies, legislative committees, individual legislators, and other individuals, groups, or entities where issues that affect residents are addressed.
 - (D) Communicate directly with legislators, policy makers, and the media about issues affecting residents and other consumers of long term care.
 - (E) Analyze, comment on, provide public testimony, and monitor the development and implementation of proposed or existing federal, state, and local laws, regulations, government policies, and actions that affect residents.
 - (F) Facilitate public comment.
 - (G) Provide information regarding the problems and concerns of residents and recommendations for resolving those problems and concerns to:
 - (i) public agencies;
 - (ii) private entities; and
 - (iii) state and federal legislators.
 - (H) Take any other action relating to the ombudsman program determined to be appropriate by the state ombudsman.
- (8) Pursue administrative, legal, and other remedies on behalf of residents.
- (9) In accordance with federal and state laws and regulations, share information related to long term care facilities with the Indiana state department of health.
- (10) Whenever possible, participate in surveys of long term care facilities conducted by the Indiana state department of health.
- (11) Document and report activities as required by the office.
- (12) Accept the direction, instruction, guidance, and assistance of the state ombudsman, in consultation with the local ombudsman entity, in all program activities.
- (13) Follow federal and state laws and these rules.
- (14) Carry out other program-related activities that the state ombudsman determines to be appropriate.

(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 1-7-9; filed Mar 6, 2000, 7:51 a.m.: 23 IR 1644)

460 IAC 1-7-10 Volunteer ombudsman; designation; certification; dedesignation

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-10-13-17

Affected: IC 12-10-13-4.5

DIVISION OF DISABILITY, AGING, AND REHABILITATIVE SERVICES

Sec. 10. (a) The state ombudsman may designate a volunteer ombudsman to perform specific office duties.

(b) To be designated as a volunteer ombudsman, an individual shall:

- (1) successfully complete the Indiana long term care volunteer ombudsman program training; and
- (2) be free of conflicts of interest as required by this rule.

(c) Each volunteer ombudsman designated in accordance with subsection (a) must be certified for a period not to exceed two (2) years.

(d) The local ombudsman shall assess each volunteer ombudsman at least every two (2) years and make a recommendation regarding recertification to the state ombudsman. In order to be recertified, the volunteer ombudsman shall:

- (1) satisfactorily perform the duties of the position;
- (2) remain free of conflicts of interest as required by this rule; and
- (3) meet any additional requirements specified by law or regulation.

(e) The state ombudsman, in coordination with the local ombudsman, may dedesignate a volunteer ombudsman for cause, including, but not limited to, the following:

- (1) Failure of the volunteer ombudsman to follow the direction and supervision of the state or local ombudsman.
- (2) Acting outside the area of responsibility.
- (3) Taking any action which endangers the health, safety, welfare, or rights of residents.
- (4) Failure to disclose or correct a conflict of interest.
- (5) Failure to satisfactorily perform the duties of a volunteer ombudsman.

(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 1-7-10; filed Mar 6, 2000, 7:51 a.m.: 23 IR 1645)

460 IAC 1-7-11 Conflict of interest; state ombudsman and state level office staff

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-10-13-17

Affected: IC 12-10-13

Sec. 11. Any individual who has the following conflicts of interest, or any individual who has an immediate family member with these conflicts of interest, shall not be appointed as state ombudsman or to the staff of the state office:

- (1) Having a financial interest in a long term care facility or a long term care service within three (3) years before the date of appointment.
- (2) Employment in a long term care facility within one (1) year before the date of appointment.
- (3) Current direct involvement in the licensing or certification of a long term care facility or a provider of a long term care service.
- (4) Current employment in, contractual arrangement with, or participation in the management of a long term care facility.
- (5) Current membership in a trade association of long term care facilities.

(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 1-7-11; filed Mar 6, 2000, 7:51 a.m.: 23 IR 1645)

460 IAC 1-7-12 Conflict of interest; board members, officers, and employees of local ombudsman entities

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-10-13-17

Affected: IC 12-10-13

Sec. 12. (a) Board members of the local ombudsman entity who are not free from conflicts of interest shall not participate in any discussion or vote on any matters pertaining to the program, and such recusal shall be made a part of the minutes or other official record of the local entity's board of directors or other comparable governing body. Such conflicts of interest include the following:

- (1) Current direct involvement in the licensing or certification of a long term care facility or a provider of a long term care service.
- (2) Current employment in, contractual arrangement with, or participation in the management of a long term care facility.
- (3) A current financial interest in a long term care facility or a long term care service.
- (4) Current membership in a trade association of long term care facilities.

(b) In order to receive and maintain designation or to be redesignated as a local ombudsman entity, officers of those entities seeking to be designated or redesignated as local ombudsman entities shall be free from conflicts of interest, which include the following:

(1) Current direct involvement in the licensing or certification of a long term care facility or a provider of a long term care service.

(2) Current employment in, contractual arrangement with, or participation in the management of a long term care facility.

(3) A current financial interest in a long term care facility or a long term care service.

(4) Current membership in a trade association of long term care facilities.

(c) In order to receive designation, or redesignation, as a local ombudsman entity, employees of those entities who supervise a local ombudsman shall be free from conflicts of interest, which include the following:

(1) Current direct involvement in the licensing or certification of a long term care facility or a provider of a long term care service.

(2) Current employment in, contractual arrangement with, or participation in the management of a long term care facility.

(3) A current financial interest in a long term care facility or a long term care service.

(4) Current membership in a trade association of long term care facilities.

(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 1-7-12; filed Mar 6, 2000, 7:51 a.m.: 23 IR 1645)

460 IAC 1-7-13 Conflict of interest; local ombudsman and volunteer ombudsman; family members

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-10-13-17

Affected: IC 12-10-13

Sec. 13. (a) In order to receive designation or certification, or to avoid dedesignation, as a local ombudsman or a volunteer ombudsman, an individual shall be free from conflicts of interest, which include the following:

(1) A financial interest in a long term care facility or a long term care service within three (3) years before the date of designation.

(2) Acting as local ombudsman or volunteer ombudsman in a long term care facility in which the individual was employed within one (1) year before the date of designation.

(3) Current direct involvement in the licensing or certification of a long term care facility or a provider of long term care service.

(4) Current employment in, contractual arrangement with, or participation in the management of a long term care facility.

(5) Current membership in a trade association of long term care facilities.

(6) Currently serving as an officer of a local ombudsman entity.

(7) Currently serving as a supervisor of other programs that may come in conflict with the duties of the ombudsman program.

(8) Currently performing duties or providing services other than those required in this rule that are in conflict with, or that may create a conflict with, the duties required in this rule.

(9) Currently serving as:

(A) a resident's agent;

(B) a resident's legal representative;

(C) the sole witness for do not resuscitate orders or other medical directives; or

(D) a member of a long term care facility's ethics committee which makes medical decisions for residents.

(b) A family member who serves as a resident who is their family member's agent or legal representative shall not be regarded as having a conflict of interest.

(c) In order to receive designation or certification, or to avoid dedesignation, as a local ombudsman or a volunteer ombudsman, an individual's immediate family members shall be free from conflicts of interest, which include the following:

(1) Current direct involvement in the licensing or certification of a long term care facility or a provider of a long term care service.

(2) Current participation through direct employment or contractual arrangement in the management of a long term care facility in the volunteer ombudsman's or local ombudsman's service area.

(3) A current financial interest in a long term care facility or a long term care service.

(4) Current membership in a trade association of long term care facilities.

(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 1-7-13; filed Mar 6, 2000, 7:51 a.m.: 23 IR 1646)

460 IAC 1-7-14 Ombudsman program records; confidentiality; access; disclosure of identity of complainant or resident

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-10-13-17

Affected: IC 12-10-13-16.4; IC 12-10-13-16.8

Sec. 14. (a) All program records developed or maintained by the local ombudsman or volunteer ombudsman in the course of work for the office become the property of the office.

(b) All program records shall be kept confidential and released only pursuant to state law and this rule.

(c) Ombudsman program records shall be maintained in secure files to ensure confidentiality. Measures shall be implemented by the division and the local ombudsman entity to ensure confidentiality to the local ombudsman, state ombudsman, and the state level staff of the office with respect to the receipt of complaints by mail, fax, telephone, or personal interview, which measures shall include means for the delivery of mail, addressed to representatives of the office by name or title, unopened.

(d) Access to program records shall be limited to the following, and to them only for purposes associated with their official duties:

(1) The state ombudsman.

(2) The state level staff of the office.

(3) The local ombudsman.

(e) The state ombudsman, the state level staff of the office, the local ombudsman, and the volunteer ombudsman shall not disclose the identity of a complainant or resident, except:

(1) with the written consent of the resident or complainant or his or her legal representative;

(2) with the oral consent of the resident or complainant or his or her legal representative, and the consent is documented contemporaneously on a form prescribed or approved by the office; or

(3) the disclosure is required by court order.

(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 1-7-14; filed Mar 6, 2000, 7:51 a.m.: 23 IR 1646)

460 IAC 1-7-15 Access to facilities and facilities' records

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-10-13-17

Affected: IC 5-14-3-8; IC 12-10-13-16.2; IC 12-10-13-16.5

Sec. 15. (a) Representatives of the office shall have access to long term care facilities at all times.

(b) Representatives of the office shall have access to those records of a long term care facility that residents or the general public have access to as a matter of law, or to records or documentation when such records or documentation are *[sic., is]* relevant to a complaint or an investigation and disclosure is not prohibited by state or federal laws or regulations governing the confidentiality of such records or documentation. Records and documentation of a long term care facility are relevant if they relate to or address the subject matter of the complaint or investigation.

(c) Representatives of the office shall be permitted to make or obtain copies of these records. A long term care facility may charge for the copies at a rate not to exceed the rate specified by state law.

(d) Representatives of the office shall have access to a resident's medical, financial, and social records as provided under IC 12-10-13. *(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 1-7-15; filed Mar 6, 2000, 7:51 a.m.: 23 IR 1647)*

460 IAC 1-7-16 Access to agency records

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-10-13-17

Affected: IC 12-10-13-16.6

Sec. 16. (a) Representatives of the office shall have access to records of a state or local government agency that are relevant to a complaint or investigation, except as prohibited by state or federal law or regulation. For purposes of this section, the term "relevant records" refers to those records that address the subject matter of a complaint, or investigation, or that pertain to a long term care facility that is involved in a complaint, or that is the subject of an investigation.

(b) If the records pertain to a particular resident, the representative of the office shall obtain consent to access the records in accordance with state law. *(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 1-7-16; filed Mar 6, 2000, 7:51 a.m.: 23 IR 1647)*

460 IAC 1-7-17 Legal counsel

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-10-13-17
Affected: IC 12-10-13

Sec. 17. (a) State and local ombudsmen shall have access to legal counsel that is able, without conflict of interest, to provide advice and consultation necessary to:

- (1) protect the health, safety, welfare, and rights of residents of long term care facilities; and
- (2) assist the state and local ombudsmen in the performance of their official duties.

(b) The division shall be responsible for arranging for legal representation of state and local ombudsmen against whom legal action is brought or threatened to be brought in connection with the performance of the official duties of the ombudsmen. (*Division of Disability, Aging, and Rehabilitative Services; 460 IAC 1-7-17; filed Mar 6, 2000, 7:51 a.m.: 23 IR 1647*)

460 IAC 1-7-18 Monitoring

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-10-13-17
Affected: IC 12-10-13

Sec. 18. (a) The state ombudsman shall monitor and assess the performance of the local ombudsman entity and the local ombudsman to ensure compliance with all applicable laws and regulations governing the program and this rule. Monitoring shall include, but shall not be limited to, a review of local ombudsman case records. The state ombudsman and the state level staff of the office shall have access to all necessary records containing the identity or identifying information of residents or complainants in order to conduct the monitoring and assessment. Monitoring and assessment shall be conducted by the state ombudsman and the state level staff office as follows:

- (1) The local ombudsman entity shall be responsible for monitoring and assessing administrative compliance using a tool developed by the state ombudsman.
- (2) The state ombudsman and the state level staff of the office shall be responsible for assessment of the performance of program duties and for case record monitoring and assessment in order to maintain the confidentiality of program files.
- (3) The results of the administrative monitoring and assessment and the case record monitoring and assessment shall be shared among the state ombudsman, the local ombudsman, and the local ombudsman entity.

(b) The results of the monitoring and assessment shall be considered a factor by the state ombudsman in determining whether to redesignate the local ombudsman entity and recertify the local ombudsman. (*Division of Disability, Aging, and Rehabilitative Services; 460 IAC 1-7-18; filed Mar 6, 2000, 7:51 a.m.: 23 IR 1647*)

460 IAC 1-7-19 Noninterference

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-10-13-17
Affected: IC 12-10-13

Sec. 19. (a) A person shall not exert inappropriate or improper influence on a representative of the office or take any action which will in any way compromise, delay, or limit:

- (1) the investigation or outcome of complaints;
- (2) the representative's role as advocate for the rights and interests of residents;
- (3) the representative's attempt to resolve issues related to the rights, quality of care, and quality of life of the residents; or
- (4) the representative's responsibility to provide information or recommendations regarding problems and concerns of residents or clients, as necessary, to public and private agencies, legislators, or other persons.

(b) Any interference with the duties of a representative of the office by an officer or employee of the division or an officer or employee of the local ombudsman entity shall be deemed a breach of the duties of the division or local ombudsman entity, as specified in this rule. (*Division of Disability, Aging, and Rehabilitative Services; 460 IAC 1-7-19; filed Mar 6, 2000, 7:51 a.m.: 23 IR 1648*)

460 IAC 1-7-20 Violations

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-10-13-17
Affected: IC 12-10-13-20

Sec. 20. A person who takes any of the following actions commits a Class B misdemeanor:

- (1) Intentionally prevents the work of the office.
- (2) Knowingly offers compensation to the office in an effort to affect the outcome of an investigation or a potential investigation.
- (3) Retaliates against a resident, a client, an employee, or another person who files a complaint or provides information to the office.

(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 1-7-20; filed Mar 6, 2000, 7:51 a.m.: 23 IR 1648)

460 IAC 1-7-21 Administrative reconsideration; appeals

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-10-13-17
Affected: IC 4-21.5

Sec. 21. (a) A local ombudsman entity that is dedesignated or that is not redesignated may request a reconsideration of the decision to the state ombudsman. The state ombudsman shall provide a response to the request for reconsideration within fifteen (15) days from the date the request is received, including a notice of the right to appeal the decision. A local ombudsman entity that is dissatisfied with the decision on reconsideration may appeal the decision. The appeal shall be conducted in accordance with IC 4-21.5.

(b) A local ombudsman who is dedesignated or who is not redesignated may, in coordination with the local ombudsman entity or independently, seek reconsideration from the state ombudsman. The state ombudsman shall provide a response to the request within fifteen (15) days of the date the request is received, including a notice of the right to appeal the decision. A local ombudsman who is dissatisfied with the decision may, in coordination with the local ombudsman entity or independently, appeal the decision. The appeal shall be conducted in accordance with IC 4-21.5. *(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 1-7-21; filed Mar 6, 2000, 7:51 a.m.: 23 IR 1648)*

Rule 8. Personal Services Attendant for Individuals in Need of Self-Directed In-Home Care

460 IAC 1-8-1 Definitions

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-10-17-19
Affected: IC 12-10-10; IC 12-10-17; IC 12-15-34-1; IC 16-25; IC 25-1-9-2; IC 25-1-9-3

Sec. 1. (a) The definitions in this section apply throughout this rule.

(b) "Ancillary services" means services ancillary to the basic services provided to an individual in need of self-directed in-home care who needs at least one (1) of the basic services listed in subsection (d). The term includes the following:

- (1) Homemaker type services, including shopping, laundry, cleaning, and seasonal chores.
- (2) Companion type services, including transportation, letter writing, mail reading, and escort services.
- (3) Assistance with cognitive tasks, including managing finances, planning activities, and making decisions.

(c) "Attendant care services" means those basic and ancillary services, which the individual chooses to direct and supervise a personal services attendant to perform, that enable an individual in need of self-directed in-home care to live in the individual's home and community rather than in an institution and to carry out functions of daily living, self-care, and mobility.

(d) "Basic services" means a function that could be performed by the individual in need of self-directed in-home care if the individual were not physically disabled. The term includes the following:

- (1) Assistance in getting in and out of beds, wheelchairs, and motor vehicles.
- (2) Assistance with routine bodily functions, including:
 - (A) health related services as defined in subsection (f);
 - (B) bathing and personal hygiene;
 - (C) dressing and grooming; and

(D) feeding, including preparation and cleanup.

(e) "Geographic area" means one (1) county of the state.

(f) "Health related services" means those medical activities that, in the written opinion of the attending physician submitted to the case manager of the individual in need of self-directed in-home care, could be performed by the individual if the individual were physically capable, and if the medical activities can be safely performed in the home, and either:

(1) are performed by a person who has been trained or instructed on the performance of the medical activities by an individual in need of self-directed in-home care who is, in the written opinion of the attending physician submitted to the case manager of the individual in need of self-directed in-home care, capable of training or instructing the person who will perform the medical activities; or

(2) are performed by a person who has received training or instruction from a licensed health professional, within the professional's scope of practice, in how to properly perform the medical activity for the individual in need of self-directed in-home care.

(g) "Individual in need of self-directed in-home care" means an individual with a disability, or person responsible for making health related decisions for the individual with a disability, who:

(1) is approved to receive Medicaid waiver services under 42 U.S.C. 1396n(c), or is a participant in the community and home options to institutional care for the elderly and disabled program under IC 12-10-10;

(2) is in need of attendant care services because of impairment;

(3) requires assistance to complete functions of daily living, self-care, and mobility, including those functions included in attendant care services;

(4) chooses to self-direct a paid personal services attendant to perform attendant care services; and

(5) assumes the responsibility to initiate self-directed in-home care and exercise judgment regarding the manner in which those services are delivered, including the decision to employ, train, and dismiss a personal services attendant.

(h) "Licensed health professional" means the following:

(1) A registered nurse.

(2) A licensed practical nurse.

(3) A physician with an unlimited license to practice medicine or osteopathic medicine.

(4) A licensed dentist.

(5) A licensed chiropractor.

(6) A licensed optometrist.

(7) A licensed pharmacist.

(8) A licensed physical therapist.

(9) A certified occupational therapist.

(10) A certified psychologist.

(11) A licensed podiatrist.

(12) A licensed speech-language pathologist or audiologist.

(i) "Personal services attendant" means an individual who is registered to provide attendant care services under this rule and who has entered into a contract with an individual and acts under the individual's direction to provide attendant care services that could be performed by the individual if the individual were physically capable.

(j) "Self-directed in-home health care" means the process by which an individual, who is prevented by a disability from performing basic and ancillary services that the individual would perform if not disabled, chooses to direct and supervise a paid personal services attendant to perform those services in order for the individual to live in the individual's home and community rather than an institution. (*Division of Disability, Aging, and Rehabilitative Services; 460 IAC 1-8-1; filed Oct 2, 2002, 9:13 a.m.: 26 IR 350*)

460 IAC 1-8-2 Exclusions from rule

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-10-17-19

Affected: IC 12-15-34-1; IC 16-25; IC 25-1-9-2; IC 25-1-9-3

Sec. 2. This rule does not apply to the following:

(1) An individual who provides attendant care services and who is employed by and under the direct control of a home health

agency (as defined in IC 12-15-34-1).

(2) An individual who provides attendant care services and who is employed by and under the direct control of a licensed hospice program under IC 16-25.

(3) An individual who provides attendant care services and who is employed by and under the control of an employer that is not the individual who is receiving the services.

(4) A practitioner (as defined in IC 25-1-9-2) who is practicing under the scope of the practitioner's license (as defined in IC 25-1-9-3).

(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 1-8-2; filed Oct 2, 2002, 9:13 a.m.: 26 IR 351)

460 IAC 1-8-3 Attendant care service provider registration requirement; preclusion

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-10-17-19

Affected: IC 12-10-10; IC 12-10-17; IC 12-15

Sec. 3. (a) An individual desiring to provide attendant care services must register with the division.

(b) An individual may not provide attendant care services for compensation from Medicaid or the community and home options to institutional care for the elderly and disabled program for an individual in need of self-directed in-home care services unless the individual seeking to provide attendant care services is registered with the division.

(c) An individual who is a legally responsible relative of an individual in need of self-directed in-home care, including a parent of a minor individual and a spouse, is precluded from providing attendant care services for that individual for compensation under this section. *(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 1-8-3; filed Oct 2, 2002, 9:13 a.m.: 26 IR 351)*

460 IAC 1-8-4 Requirements to become registered as attendant care service provider; certificate

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-10-17-19

Affected: IC 12-10-17; IC 16-28-13

Sec. 4. (a) In order to be registered with the division, an individual must submit the following:

(1) A personal résumé containing information concerning the individual's qualifications, work experience, and any credentials the individual may hold. The individual must certify that the information contained in the résumé is true and accurate.

(2) The individual's limited criminal history check from the Indiana central repository for criminal history information under IC 5-2-5 [IC 5-2-5 was repealed by P.L.2-2003, SECTION 102, effective July 1, 2003.] or another source allowed by law.

(3) If applicable, the individual's state nurse aide registry report, referred to in IC 16-28-13, from the state department of health. This subdivision does not require an individual to be a nurse aide.

(4) Three (3) letters of reference.

(5) A registration fee of zero dollars (\$0).

(6) Proof that the individual is at least eighteen (18) years of age.

(7) Any other information required by the division.

(b) Subject to section 9(c) of this rule, if the requirements of subsection (a) are satisfactorily met, the division shall issue a certificate of registration for the period required under IC 12-10-17, effective on the date that the certificate of registration is issued.

(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 1-8-4; filed Oct 2, 2002, 9:13 a.m.: 26 IR 351)

460 IAC 1-8-5 File maintained by division

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-10-17-19

Affected: IC 12-10-17

Sec. 5. The division shall maintain a file for each personal services attendant that contains the following:

(1) Comments related to the provision of attendant care services, including periodic reports on the quality of services provided by the personal services attendant, submitted by an individual in need of self-directed in-home care who has employed the personal services attendant; and

(2) The items described in section 4(a)(1) through 4(a)(4) of this rule.

(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 1-8-5; filed Oct 2, 2002, 9:13 a.m.: 26 IR 351)

460 IAC 1-8-6 Renewal of registration

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-10-17-19
Affected: IC 12-10-17

Sec. 6. (a) A personal services attendant may renew the personal services attendant's registration by doing the following:

- (1) Updating any information in the file described in section 5 of this rule that has changed; and
- (2) Paying the fee required under section 4(a)(5) of this rule.

(b) The limited criminal history check required under section 4(a)(2) of this rule and the nurse aide registry report described in section 4(a)(3) of this rule must be updated every two (2) years. (*Division of Disability, Aging, and Rehabilitative Services; 460 IAC 1-8-6; filed Oct 2, 2002, 9:13 a.m.: 26 IR 352*)

460 IAC 1-8-7 Information available from division

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-10-17-19
Affected: IC 5-14-3; IC 12-10-17

Sec. 7. Upon request, an individual in need of self-directed in-home care shall receive from the division the following:

- (1) Without charge, a list of personal services attendants who are registered with the division and available within the geographic area requested.
- (2) A copy of the information of a specified personal services attendant who is on file with the division under section 5 of this rule. The division may charge a fee in accordance with IC 5-14-3, not to exceed five dollars (\$5), for shipping, handling, and copying expenses.

(*Division of Disability, Aging, and Rehabilitative Services; 460 IAC 1-8-7; filed Oct 2, 2002, 9:13 a.m.: 26 IR 352*)

460 IAC 1-8-8 Contract required

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-10-17-19
Affected: IC 12-10-17-16

Sec. 8. The individual in need of self-directed in-home care and the personal services attendant must each sign a contract, in a form approved by the division, that includes, at a minimum, the following:

- (1) The responsibilities of the personal services attendant.
- (2) The frequency the personal services attendant will provide attendant care services.
- (3) The duration of the contract.
- (4) The hourly wage of the personal services attendant. The wage may not be less than the federal minimum wage or more than the rate that the recipient is eligible to receive under a Medicaid home and community based services waiver or the community and home options to institutional care for the elderly and disabled program for attendant care services.
- (5) Reasons and notice agreements for early termination of the contract.

(*Division of Disability, Aging, and Rehabilitative Services; 460 IAC 1-8-8; filed Oct 2, 2002, 9:13 a.m.: 26 IR 352*)

460 IAC 1-8-9 Appeals and review

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-10-17-20
Affected: IC 4-21.5-3; IC 4-21.5-5

Sec. 9. (a) The division, through designated representatives, shall investigate complaints by or on behalf of an individual in need of self-directed in-home care concerning the neglect, abuse, mistreatment, or misappropriation of property of an individual in need of self-directed in-home care by a personal services attendant.

(b) The division shall make a determination as to whether or not a personal services attendant neglected, abused or misappropriated the property of an individual in need of self-directed in-home care by a personal services attendant. The finding shall be entered into the personal services attendant's file with the division. The division shall give the personal services attendant notice of its determination.

(c) If the division determines that a personal services attendant neglected, abused, or misappropriated the property of an

individual in need of self-directed care, the division may remove the personal services attendant from the list of registered personal services attendants and revoke or deny the certificate of registration.

(d) If the division determines that a personal services attendant neglected, abused, or misappropriated the property of an individual in need of self-directed care, the division shall give written notice to the personal services attendant of the procedures and time limit for seeking administrative review of the division's determination pursuant to this section.

(e) A personal services attendant found by representatives of the division to have committed neglect, abuse, mistreatment or misappropriation of property of an individual in need of self-directed in-home care and who disagrees with the decision may petition for administrative review of the decision. The petition must be in writing, show that the petitioner was directly affected by the decision, and contain the specific issues for review and the rationale for the petitioner's position. The petition must be filed within fifteen (15) days after the petitioner is given notice of the decision. The petition must be filed with the director of the division.

(f) Upon receiving timely notice of an appeal, the director or the director's designee shall appoint an administrative law judge to conduct the proceedings on review. The proceedings shall be conducted in accordance with IC 4-21.5-3.

(g) Upon exhaustion of the administrative remedies in subsections (c) and (d), a personal services attendant who is dissatisfied with the outcome may file a petition for judicial review pursuant to IC 4-21.5-5. The petition must be filed in a court of competent jurisdiction within thirty (30) days after receiving notice of the final agency decision. The petition must be served upon the director of the division, the attorney general, and any other party to the agency proceeding. (*Division of Disability, Aging, and Rehabilitative Services; 460 IAC 1-8-9; filed Oct 2, 2002, 9:13 a.m.: 26 IR 352*)

460 IAC 1-8-10 Nurse aide registry

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-10-17-20

Affected: IC 16-28-13

Sec. 10. At the conclusion of all appeals taken, or if no appeal is taken, upon determination by the division of the merits of a complaint, a personal services attendant found to have committed neglect, abuse, mistreatment, or misappropriation of property of an individual in need of self-directed in-home care shall be placed on the state nurse aide registry referred to in IC 16-28-13. (*Division of Disability, Aging, and Rehabilitative Services; 460 IAC 1-8-10; filed Oct 2, 2002, 9:13 a.m.: 26 IR 353*)

ARTICLE 2. DIVISION OF REHABILITATION SERVICES

Rule 1. Office of Services for the Blind and Visually Impaired—Vending Program for the Blind (Repealed)

(*Repealed by Division of Disability, Aging, and Rehabilitative Services; filed Aug 23, 2001, 2:30 p.m.: 25 IR 82*)

Rule 2. Board of Interpreter Standards

460 IAC 2-2-1 Purpose (Expired)

Sec. 1. (*Expired under IC 4-22-2.5, effective January 1, 2004.*)

460 IAC 2-2-2 Definitions (Expired)

Sec. 2. (*Expired under IC 4-22-2.5, effective January 1, 2004.*)

460 IAC 2-2-3 Appointment of the board (Expired)

Sec. 3. (*Expired under IC 4-22-2.5, effective January 1, 2004.*)

Rule 3. Interpreter Standards for the Deaf and Hard of Hearing

460 IAC 2-3-1 Purpose; exclusion

Authority: IC 12-12-7-5
Affected: IC 12-12-7

Sec. 1. (a) The purpose of this rule is to establish standards pursuant to IC 12-12-7-5 that determine the necessary standards of behavior, competency, and proficiency in sign language and oral interpreting and ensure quality, professional interpreting services in order to protect the public and persons who are deaf or hard of hearing from misrepresentation.

(b) The provisions of this rule will not apply to interpreters while they are interpreting in a public or private primary or secondary school setting. Rules applying specifically to such interpreters are at 460 IAC 2-5. (*Division of Disability, Aging, and Rehabilitative Services; 460 IAC 2-3-1; filed Jul 21, 2000, 10:01 a.m.: 23 IR 3084; filed Nov 4, 2002, 12:11 p.m.: 26 IR 747; errata filed Jun 9, 2004, 2:50 p.m.: 27 IR 3078*)

460 IAC 2-3-2 Definitions and acronyms

Authority: IC 12-12-7-5
Affected: IC 12-12-7; IC 20-10.1-7-17; IC 20-12-72

Sec. 2. (a) The definitions and acronyms in this section apply throughout this rule unless specifically noted.

(b) "ASL" means American Sign Language.

(c) "BIS" means board of interpreter standards.

(d) "CDI" means certified deaf interpreter.

(e) "CDIP" means certified deaf interpreter provisional.

(f) "CEU" means continuing education unit.

(g) "Consumer" means the persons for and between whom the interpreter is facilitating communication, and includes both hearing and deaf consumers.

(h) "DDARS" means the division of disability, aging, and rehabilitative services.

(i) "Deaf/blind interpreting" means using the special skills required to interpret for a person who uses ASL and is both deaf and blind.

(j) "DHHS" means deaf and hard of hearing services.

(k) "Identified interpreting agency" means an agency whose business is providing interpreting services, has been in business prior to July 1, 1999, and is found on a list of identified interpreting agencies with DHHS.

(l) "Interpreter" refers to both interpreters and transliterators.

(m) "ITP" means interpreter training program.

(n) "Minimal language skilled interpreting" means using the special skills required to interpret for a person who has no first language and minimal skills in any other language.

(o) "NAD" means National Association of the Deaf.

(p) "Payee" means a person who contracts with a freelance interpreter on behalf of a public or private agency, organization, or business for a particular assignment involving one (1) or more deaf clients and one (1) or more hearing consumers.

(q) "Proof of employment" means a letter from approved agency, or copy of pay stub, or 1099 Form, or W-2.

(r) "RID" means Registry of Interpreters for the Deaf.

(s) "Setting" means the context within which an interpreting assignment takes place.

(t) "Team stage interpreting" means using the special skills required to interpret on stage or at a large event in tandem with a team of interpreters.

(u) "TECUnit" means Testing, Evaluation, and Certification Unit, Inc. (*Division of Disability, Aging, and Rehabilitative Services; 460 IAC 2-3-2; filed Jul 21, 2000, 10:01 a.m.: 23 IR 3085; filed Nov 4, 2002, 12:11 p.m.: 26 IR 747*)

460 IAC 2-3-3 Certification requirements

Authority: IC 12-12-7-5
Affected: IC 12-12-7

Sec. 3. (a) In order to receive certification as an interpreter under this rule by the state, an individual must register with DHHS

in the manner prescribed by DHHS and fulfill at least one (1) of the following criteria:

- (1) Pass the RID written generalist test, hold NAD Level III, and obtain two (2) DHHS-approved CEUs per year for up to five (5) years.
- (2) Pass the RID written generalist test, be a graduate of an accredited ITP, and obtain two (2) DHHS-approved CEUs per year for up to five (5) years.
- (3) Hold NAD Level IV or above.
- (4) Hold RID certification.
- (5) Hold RID oral certification for situations requiring an oral interpreter only.
- (6) Hold certification from TECUnit and have passed the RID written generalist test for situations requiring a cued speech transliterator.
- (7) Hold RID, CDI, or CDIP.

(8) Be a deaf or hard of hearing person, produce one (1) letter of recommendation to be filed with DHHS from an identified interpreting agency which has previously hired the applicant for deaf/blind interpreting, minimal language skilled interpreting, or team stage interpreting, and obtain two (2) DHHS-approved CEUs per year for up to five (5) years.

(9) Provide documentation of proof of employment as an interpreter prior to July 1, 1999, to be placed on file with DHHS, produce one (1) letter of recommendation from an identified interpreting agency which hired the applicant prior to July 1, 1999, and obtain two (2) DHHS-approved CEUs per year. (This includes deaf, hard of hearing, and hearing interpreters.)

(b) Commencing July 1, 2010, in order to receive certification by the state, an individual must fulfill the requirements in subsection (a) and also hold a bachelor's degree from an accredited college or university. An interpreter who has met the requirements of subsection (a) prior to July 1, 2010, shall be exempt from the additional requirement of this subsection.

(c) Interpreters holding NAD or RID certifications must maintain these certifications in good standing in order to maintain their certification by the state, including fulfilling the continuing education requirements of NAD or RID.

(d) Fulfillment of the requirements of subsection (a)(1), or (a)(2), or (a)(8) shall allow an interpreter to be certified by the state for a maximum period of five (5) years from the date originally certified. At or before the conclusion of this period, an interpreter must fulfill the requirements of at least one (1) of subsection (a)(3) through (a)(7) to continue certification by the state.

(e) An interpreter certified by the state shall renew such certification at least every two (2) years in the manner prescribed by DHHS. (*Division of Disability, Aging, and Rehabilitative Services; 460 IAC 2-3-3; filed Jul 21, 2000, 10:01 a.m.: 23 IR 3085; filed Nov 4, 2002, 12:11 p.m.: 26 IR 748*)

460 IAC 2-3-4 Certificate; professional qualifications

Authority: IC 12-12-7-5

Affected: IC 12-12-7

Sec. 4. (a) After being certified by the state, an interpreter shall be issued a certificate signed by the DHHS deputy director and DDARS director evidencing such certification. An interpreter shall also be issued an identification card signed by the DHHS deputy director and DDARS director, which the interpreter shall carry with him or her during interpreting assignments as proof of certification.

(b) An interpreter shall accurately present his or her Indiana identification card, certificate, professional qualifications, and/or credentials upon request. (*Division of Disability, Aging, and Rehabilitative Services; 460 IAC 2-3-4; filed Jul 21, 2000, 10:01 a.m.: 23 IR 3085*)

460 IAC 2-3-5 Code of ethics; confidentiality

Authority: IC 12-12-7-5

Affected: IC 12-12-7

Sec. 5. An interpreter shall maintain the confidentiality of all information covered during an interpreting assignment and all information about interpreting services being performed, including identity of those consumers present, regardless of perceived importance, except for the following:

- (1) An interpreter may reveal information to his or her employer, members of the employer's staff, or a professional team designated by the employer for purposes of record keeping, program management, or supervision.

(2) An interpreter may share information with peer interpreters employed by the same employer, which is necessary to best serve consumers in an ongoing interpreting situation or assignment.

(3) Unless the consumer otherwise directs, an interpreter may disclose factual information or professional assessment of the language and communication process regarding the current interpreting assignment to the payee of the interpreter or the payee's designee. Disclosure of further information requires consent of the consumer.

(4) Information that is public or not otherwise confidential under this rule or any other rule or law may be disclosed.

(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 2-3-5; filed Jul 21, 2000, 10:01 a.m.: 23 IR 3086)

460 IAC 2-3-6 Code of ethics; rendering of interpreting services; language used

Authority: IC 12-12-7-5

Affected: IC 12-12-7

Sec. 6. (a) Interpreting services shall be rendered faithfully, conveying all communication messages with the exact spirit, intent, and affect of the communicator.

(b) An interpreter shall withdraw from an assignment if his or her personal feelings interfere with performing the duties in subsection (a).

(c) An interpreter shall use the language or mode of communication most readily understood or preferred by all consumers involved. *(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 2-3-6; filed Jul 21, 2000, 10:01 a.m.: 23 IR 3086)*

460 IAC 2-3-7 Code of ethics; impartiality of interpreter

Authority: IC 12-12-7-5

Affected: IC 12-12-7

Sec. 7. (a) The interpreted message shall be transmitted impartially without the interjection of personal advice, counsel, or opinions of the interpreter.

(b) An interpreter shall not omit or add to anything that is signed or vocalized by a party, even when asked to do so by other parties involved.

(c) An interpreter shall not attempt to take on any dual role but shall act only as interpreter to assist in communications between parties involved.

(d) An interpreter may communicate directly with a party involved in order to clarify to that party the interpreter's role of facilitating communication.

(e) An interpreter should refrain from providing interpreter services in situations where family members or close personal or professional relationships may affect impartiality. However, this is not to be construed as a ban on interpreting for family, friends, or close associates in emergency situations or where the interpreter is otherwise compelled to interpret for such people. *(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 2-3-7; filed Jul 21, 2000, 10:01 a.m.: 23 IR 3086)*

460 IAC 2-3-8 Code of ethics; appropriateness of assignment for interpreter

Authority: IC 12-12-7-5

Affected: IC 12-12-7

Sec. 8. In determining whether to accept an interpreting assignment, an interpreter:

(1) must use discretion in considering:

(A) his or her skill level;

(B) the setting of the assignment;

(C) the expected content and subject matter of the assignment; and

(D) the consumers involved; and

(2) shall not accept an assignment when any of these factors make it inappropriate to do so in the best interests of the consumers involved.

(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 2-3-8; filed Jul 21, 2000, 10:01 a.m.: 23 IR 3086)

460 IAC 2-3-9 Code of ethics; compensation requests

Authority: IC 12-12-7-5

Affected: IC 12-12-7

Sec. 9. An interpreter shall request compensation for services using accepted business practices and in a professional and judicious manner, taking into account usual fees commensurate with their:

- (1) level of skill;
- (2) level of certification;
- (3) amount of experience;
- (4) nature of assignment; and
- (5) geographic region.

Terms of compensation shall be arranged in advance of the interpreting assignment whenever possible. (*Division of Disability, Aging, and Rehabilitative Services; 460 IAC 2-3-9; filed Jul 21, 2000, 10:01 a.m.: 23 IR 3086*)

460 IAC 2-3-10 Code of ethics; professional development

Authority: IC 12-12-7-5

Affected: IC 12-12-7

Sec. 10. An interpreter, in order to maintain his or her certification, shall pursue advanced knowledge, increased skills competency, and the maintenance of high professional standards through active participation in workshops, professional meetings, interaction with professional colleagues, and reading literature in the field. As part of this, an interpreter shall obtain continuing education as required in section 3 of this rule. (*Division of Disability, Aging, and Rehabilitative Services; 460 IAC 2-3-10; filed Jul 21, 2000, 10:01 a.m.: 23 IR 3087*)

460 IAC 2-3-11 Code of ethics; interpreter manner and behavior

Authority: IC 12-12-7-5

Affected: IC 12-12-7

Sec. 11. (a) Interpreting services shall be provided completely, impartially, and professionally in a manner appropriate to the situation, including behavior suitable to the particular circumstances of the interpreting assignment.

(b) An interpreter shall attempt to become familiar with the anticipated discussion topic, type of activity, level of formality, expected behaviors, and any presentational materials prior to commencement of the interpreting assignment.

(c) An interpreter shall dress in a manner that will be as unobtrusive to communication facilitation as possible and that will assure the best possible background for signing, including proper skin to clothing color contrasts and avoiding clothing patterns that may tire the eyes of deaf consumers.

(d) An interpreter shall consider background, positioning, and lighting to assure all are adequately within comfortable, nondistracting range for all parties involved.

(e) An interpreter shall assure that all consumers are duly advised that the interpreter assumes a position of neutrality in the relationship between all consumers, despite the fact that a given consumer may have hired the interpreter for the current or previous interpreting assignment, and consumers must be given the option of acceptance or rejection of the interpreter. (*Division of Disability, Aging, and Rehabilitative Services; 460 IAC 2-3-11; filed Jul 21, 2000, 10:01 a.m.: 23 IR 3087*)

460 IAC 2-3-12 Code of ethics; appropriate use of interpreter

Authority: IC 12-12-7-5

Affected: IC 12-12-7

Sec. 12. In situations where the consumer of interpreting services is not familiar with the use of an interpreter, the interpreter should share information on the appropriate use of an interpreter to help make the interpreting process successful. This should be done prior to commencing the interpreting assignment. (*Division of Disability, Aging, and Rehabilitative Services; 460 IAC 2-3-12; filed Jul 21, 2000, 10:01 a.m.: 23 IR 3087*)

460 IAC 2-3-13 Grievances; grievance committee; composition; term

Authority: IC 12-12-7-5

Affected: IC 12-12-7

Sec. 13. (a) DHHS shall create a grievance committee, of which the DHHS deputy director shall be the chair, consisting of a minimum of five (5) other members, which must consist of at least the following:

(1) At least two (2) members who:

(A) are deaf or hard of hearing; and

(B) have experience using interpreters.

(2) Two (2) members must hold either NAD or RID certification.

(3) One (1) member may be a professional other than an interpreter but must be knowledgeable of the interpreter standards set forth in this rule.

(b) The term of grievance committee members shall be three (3) years. However, the initial committee will have three (3) members to be determined by the committee who shall serve two (2) years and the remaining members shall serve three (3) years. After the initial term of each appointment, all members shall be appointed for a term of three (3) years and may be appointed for one (1) additional term. If a member of the committee resigns, dies, or is removed, the new appointee shall serve the remainder of the unexpired term. Committee members shall not be eligible for reappointment for at least one (1) year after serving two (2) consecutive terms.

(c) DHHS shall seek training in negotiation and mediation for the committee members. (*Division of Disability, Aging, and Rehabilitative Services; 460 IAC 2-3-13; filed Jul 21, 2000, 10:01 a.m.: 23 IR 3087*)

460 IAC 2-3-14 Grievances; jurisdiction of grievance committee

Authority: IC 12-12-7-5

Affected: IC 12-12-7

Sec. 14. The jurisdiction of the grievance committee referred to in this rule extends to interpreters certified and working in Indiana. (*Division of Disability, Aging, and Rehabilitative Services; 460 IAC 2-3-14; filed Jul 21, 2000, 10:01 a.m.: 23 IR 3087*)

460 IAC 2-3-15 Grievances; procedures; complaint and response

Authority: IC 4-21.5-3-34; IC 12-12-7-5

Affected: IC 12-12-7

Sec. 15. (a) A complaint may be filed by either of the following:

(1) Any person utilizing interpreting services.

(2) Any person clearly demonstrating a direct or personal interest in the occurrence specified in the complaint.

(b) The complaint must be in writing and filed with the grievance committee referred to in section 13 of this rule.

(c) The complaint must include the following:

(1) The name, address, and phone number of each person against whom charges are being filed.

(2) The date and location of the alleged violation.

(3) The specific action or actions in question making reference to a portion or portions of this rule alleged to have been violated.

(d) The complaint may be filed any time up to ninety (90) days after the date of the alleged violation or date of discovery by the complainant of the alleged violation.

(e) If a matter of extreme urgency should arise requiring immediate review by the grievance committee, the aggrieved party must attach to the complaint a request in writing for immediate review and the specific reasons for the urgency.

(f) Within thirty (30) days of receiving the complaint, each person against whom charges are made may file a response to the allegations against him or her.

(g) The response shall address, either by admitting, denying, or further explaining, each relevant aspect of each allegation stated in the complaint.

(h) The response must be sent to the grievance committee with a copy to the person who filed the complaint. (*Division of*

Disability, Aging, and Rehabilitative Services; 460 IAC 2-3-15; filed Jul 21, 2000, 10:01 a.m.: 23 IR 3088)

460 IAC 2-3-16 Grievances; committee action

Authority: IC 4-21.5-3-34; IC 12-12-7-5

Affected: IC 12-12-7

Sec. 16. (a) After a complaint has been received and a response has been filed or the thirty (30) day period has elapsed for filing a response, the DHHS deputy director as grievance committee chairperson shall review the documents and make an initial decision on the merits of the pleadings.

(b) If the DHHS deputy director finds that no violation of this rule occurred and no cause of action exists, the complaint shall be dismissed and all parties notified in writing.

(c) Upon dismissal of the complaint, the complainant may request a hearing by the full grievance committee within thirty (30) days of dismissal.

(d) If the DHHS deputy director determines that an investigation is warranted, the formal charges and grounds upon which they are based shall be set forth in writing and sent to the grievance committee and all parties involved, and the grievance committee may hold a hearing pursuant to section 17 of this rule. *(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 2-3-16; filed Jul 21, 2000, 10:01 a.m.: 23 IR 3088)*

460 IAC 2-3-17 Grievances; hearing procedure

Authority: IC 4-21.5-3-34; IC 12-12-7-5

Affected: IC 12-12-7

Sec. 17. (a) The complainant and respondent, whether or not participating in person, may be advised and represented at the party's own expense by counsel or, unless prohibited by law, by another representative. Representatives may participate in all proceedings.

(b) Any party may present any affidavits, documents, or other written evidence as to any relevant aspect of a charge or defense asserted.

(c) Any party may present witnesses to give testimony as to any relevant aspect of the charge or defense asserted.

(d) The grievance hearing shall meet at a location most convenient to all parties involved.

(e) All parties involved shall be given at least two (2) weeks' notice of the scheduled hearing date, time, and location.

(f) The complainant and the respondent shall bear their own costs and expenses in connection with the grievance process. *(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 2-3-17; filed Jul 21, 2000, 10:01 a.m.: 23 IR 3088)*

460 IAC 2-3-18 Grievances; decision of grievance committee; recommendation

Authority: IC 4-21.5-3-34; IC 12-12-7-5

Affected: IC 12-12-7

Sec. 18. (a) The grievance committee shall carefully review all documents and evidence presented.

(b) Committee members other than the DHHS deputy director may vote on the grievance. The committee's decision shall require a majority vote. If there is no majority following the vote of the committee members, the DHHS deputy director shall cast a vote to determine the majority.

(c) The committee's decision on the charges shall become a written recommendation to the DHHS deputy director and shall identify in detail the charges, the evidence used in reaching a decision, and the relevant standard for ethical behavior citation.

(d) The DHHS deputy director shall review the committee's recommendation and either adopt it, modify it, or dissolve it. The DHHS deputy director may remand the matter, with or without instructions, to the grievance committee for further proceedings.

(e) The DHHS deputy director shall issue a final decision on the grievance. One (1) copy shall be kept for the committee's records, and a copy shall be given to each party. If copies are mailed, they must be sent via certified mail, return receipt requested. *(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 2-3-18; filed Jul 21, 2000, 10:01 a.m.: 23 IR 3088)*

460 IAC 2-3-19 Grievances; enforcement; disciplinary actions

Authority: IC 4-21.5-3-34; IC 12-12-7-5

Affected: IC 12-12-7

Sec. 19. (a) When the standards of ethical behavior set forth in this rule are found by the grievance committee to have been violated, the committee may recommend to the DHHS deputy director that disciplinary action be taken against an interpreter based upon the severity of the interpreter's misconduct.

(b) The available disciplinary actions that the DHHS deputy director may take include the following:

(1) Verbal warning, which is an oral reprimand given by the DHHS deputy director.

(2) Written reprimand, which is a written notification of unsatisfactory performance.

(3) Probation, which is a trial period of a length of time specified by the DHHS deputy director during which the interpreter is required to fulfill a set of conditions or to improve work performance or on-the-job behavior.

(4) Suspension or revocation, which is suspension or revocation of Indiana interpreter certification and referral to the grievance committee of the national organization, either RID or NAD, whose certification is held.

(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 2-3-19; filed Jul 21, 2000, 10:01 a.m.: 23 IR 3089)

460 IAC 2-3-20 Grievances; appeals

Authority: IC 12-12-7-5

Affected: IC 4-21.5; IC 12-12-7

Sec. 20. An interpreter who has received disciplinary action from the DHHS deputy director may request a reconsideration of the decision to the director of DDARS. The director of DDARS shall provide a response to the request within fifteen (15) days of the date the request is received, including a notice of the right to appeal the decision. An interpreter that is dissatisfied with the decision on reconsideration may appeal the decision. The appeal shall be conducted in accordance with IC 4-21.5. *(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 2-3-20; filed Jul 21, 2000, 10:01 a.m.: 23 IR 3089)*

Rule 4. Blind and Visually Impaired Services—Indiana Randolph-Sheppard Business Enterprise Program

460 IAC 2-4-1 Purpose

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

Affected: IC 12-12-5; 20 U.S.C. 107

Sec. 1. The Indiana Randolph-Sheppard Business Enterprise Program (BEP) is established to provide blind persons with remunerative employment and to enlarge the economic opportunities for blind persons. *(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 2-4-1; filed Aug 23, 2001, 2:30 p.m.: 25 IR 62)*

460 IAC 2-4-2 Definitions

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

Affected: IC 12-9-1-1; IC 12-12-1-2; IC 12-12-5; 20 U.S.C. 107; 34 CFR 395.1

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

(1) "Abandoned" means that a BEP facility is unattended or unoperated after an operator has failed to:

(A) notify the state licensing agency of the operator's absence; and

(B) meet contractual obligations for the facility, including the requirement for continuous operation.

(2) "Active participation" means an ongoing process of good faith negotiation between the state licensing agency and the Indiana committee of licensed managers to achieve joint planning of rules, policies, standards, and practices prior to implementation by the state licensing agency. Active participation shall not supersede the final authority of the division to adopt program policy and to administer the BEP.

(3) "Agreement" means a written contract between the state licensing agency and an operator for the operation of a BEP facility.

- (4) “Applicant” means a person who has applied to or has been referred to the BEP, but who has not been accepted as a manager trainee.
- (5) “BEP” means the Indiana Randolph-Sheppard Business Enterprise Program authorized by 20 U.S.C. 107 and IC 12-12-5.
- (6) “BEP facility” means automatic vending machines, cafeterias, snack bars, cart services, shelters, counters, and other appropriate auxiliary equipment that may be used for the sale of newspapers, periodicals, confections, tobacco products, foods, beverages, and other articles or services dispensed automatically or manually and prepared on or off the premises in accordance with all applicable health laws, including the vending or exchange of chances for any lottery authorized by state law and conducted by an agency of the state within the state.
- (7) “Blind and visually impaired services” or “BVIS” means the unit of services for the blind and visually impaired, established in IC 12-12-1-2(1) as a unit of the rehabilitation services bureau of DDARS, family and social services administration.
- (8) “Business days” means regular business days recognized by the state. Regular business days do not include Saturday, Sunday, legal holidays as defined by state statute, or a day when state offices are closed during regular business hours.
- (9) “Business Enterprise Program” or “BEP” means the Indiana Randolph-Sheppard Business Enterprise Program authorized by 20 U.S.C. 107 and IC 12-12-5.
- (10) “Committee” means the Indiana committee of licensed managers established pursuant to 20 U.S.C. 107b-1.
- (11) “Committee of licensed managers” means the committee established pursuant to 20 U.S.C. 107b-1.
- (12) “Custodial authority” means the person or entity authorized to contract for the services at a site or facility.
- (13) “DDARS” means the division of disability, aging, and rehabilitative services established in IC 12-9-1-1.
- (14) “Director” means the director of DDARS.
- (15) “Division” means DDARS established in IC 12-9-1-1.
- (16) “Division of disability, aging, and rehabilitative services” means the division of disability, aging, and rehabilitative services established in IC 12-9-1-1.
- (17) “Federal property” means any building, land, or other real property owned, leased, or occupied by any department, agency, or instrumentality of the United States.
- (18) “Legal blindness” or “legally blind” means either of the following:
- (A) Visual acuity of not more than 20/200 in the better eye with best corrective lenses.
 - (B) A limitation to the field of vision in the better eye such that the widest diameter of visual field subtends an angle of no greater than twenty (20) degrees.
- (19) “License” means a written instrument that:
- (A) is issued by DDARS to a blind person; and
 - (B) authorizes that person to operate a BEP facility as a licensed manager under this rule.
- (20) “Licensed manager” means an individual who has a license issued by DDARS to operate a BEP facility under this rule.
- (21) “Management services” means supervision, inspection, quality control, consultation, accounting, regulating, in-service training, and other related services provided by the state licensing agency on a systematic basis to support and improve the operations of BEP facilities. Management services do not include those services or costs that pertain to the ongoing operation of an individual BEP facility after the initial establishment period.
- (22) “Manager” means a licensed manager.
- (23) “Manager trainee” means a blind individual who has applied for and been found eligible for vocational rehabilitation services and has been accepted for training in the business enterprise program, but who has not received a license from the state licensing agency.
- (24) “Net proceeds” means gross sales less the allowable expenses set out in section 34 of this rule that an operator has paid for the operation of the BEP facility, excluding any salary paid to the operator.
- (25) “Operator” means a licensed manager, a manager trainee, or a temporary operator who has an agreement with the state licensing agency to operate a BEP facility.
- (26) “Other property” has the meaning set out in 34 CFR 395.1(n).
- (27) “Permit” means the official approval given to the state licensing agency by a department, agency, or instrumentality in control of the maintenance, operation, and protection of federal property, or person in control of other property, whereby the state licensing agency is authorized to establish a BEP facility under 20 U.S.C. 107.
- (28) “Placement list” means an index of licensed managers and manager trainees eligible to bid on an available BEP facility.

- (29) "Primary facility" means a licensed manager's BEP facility location with the greatest amount of gross sales as determined annually on June 30 of the most recently complete state fiscal year.
- (30) "Probationary period" is the period of time from a manager trainee's placement at a BEP facility until the manager trainee is licensed under this rule.
- (31) "Seniority" has the following meaning:
- (A) For a licensed manager, seniority is determined from the date a licensed manager is licensed to operate a BEP facility and continues to accrue as long as the licensed manager holds a valid agreement with the state licensing agency to operate a BEP facility.
 - (B) For a manager trainee, seniority is determined from the date that BVIS received the manager trainee referral from vocational rehabilitation services.
- (32) "Set aside funds" means funds accruing to the state licensing agency from:
- (A) a uniform assessment against the net proceeds of assigned BEP facilities; or
 - (B) vending machines on federal property under 34 CFR 395.8.
- (33) "State licensing agency" means DDARS.
- (34) "Temporary operator" means a licensed manager, a manager trainee, or any sighted or blind person who enters into an agreement with the state licensing agency to operate a BEP facility on a temporary basis when a licensed manager or manager trainee is not available.
- (35) "Ultimate authority" means the director of DDARS.
- (36) "Vocational rehabilitation services" means the unit of vocational rehabilitation established in IC 12-12-1-2(2) as a unit of the rehabilitation services bureau in DDARS.

(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 2-4-2; filed Aug 23, 2001, 2:30 p.m.: 25 IR 62)

460 IAC 2-4-3 State licensing agency functions

Authority: IC 12-8-8-4; IC 12-9-2-3
Affected: IC 12-12-5; 20 U.S.C. 107

Sec. 3. The state licensing agency shall:

- (1) have the ultimate responsibility for the administration of the BEP under 20 U.S.C. 107 and IC 12-12-5;
- (2) carry out the duties of planning programs and setting policies, standards, and procedures with the active participation of the Indiana committee of licensed managers;
- (3) select and develop suitable locations for BEP facilities in properties owned, leased in whole or in part, or operated by:
 - (A) the United States government;
 - (B) the state;
 - (C) a county;
 - (D) a township;
 - (E) a city;
 - (F) a town; or
 - (G) a private entity;
- (4) determine the criteria for suitable locations for BEP facility, with the criteria to include the income potential of potential locations;
- (5) designate a specific location or locations as a BEP facility;
- (6) take reasonable steps to improve the profitability of each BEP facility, including determining whether other locations or sites should be added as part of the facility;
- (7) select and supervise licensed managers for BEP facilities, giving preference to blind persons who are in need of employment;
- (8) require that all aspects of a licensed manager's operations, including fiscal matters, are in compliance with business enterprise program rules and procedures;
- (9) make suitable BEP equipment and adequate initial stock available to operators;
- (10) coordinate the state's business enterprise program with the state's vocational rehabilitation program to provide:
 - (A) initial training in aspects of BEP facility operation;

(B) upward mobility training, including further education, additional training, or retraining for improved work opportunities; and

(C) services after licensing to assure that the maximum vocational potential of each licensed manager is achieved;

(11) provide access in Braille, large print, recorded tape, or computer disk, if reasonably possible, to all financial data of the state licensing agency relevant to the operation of the business enterprise program, including quarterly and annual financial reports, provided that disclosure does not violate applicable federal or state laws pertaining to the disclosure of confidential information;

(12) develop forms and written procedures necessary to implement and carry out the provisions of this rule;

(13) conduct a biennial election of the Indiana committee of licensed managers, with no direct involvement of staff of the state licensing agency in the outcome of the election process;

(14) meet regularly with the Indiana committee of licensed managers to ensure the committee's active participation regarding major administrative decisions, policy, and program development decisions; and

(15) notify the Indiana committee of licensed managers in writing of decisions made or actions taken that are different from the recommendations of the committee, and the reason for the difference or differences.

(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 2-4-3; filed Aug 23, 2001, 2:30 p.m.: 25 IR 64)

460 IAC 2-4-4 Program participants; nondiscrimination

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

Affected: IC 12-12-5; 20 U.S.C. 107; 34 CFR 395.1

Sec. 4. No licensed manager or manager trainee in, or applicant for, the business enterprise program shall be discriminated against on the basis of sex, age, disability, race, creed, color, national origin, organizational affiliation, or political affiliation.

(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 2-4-4; filed Aug 23, 2001, 2:30 p.m.: 25 IR 64)

460 IAC 2-4-5 Qualifications of applicant

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

Affected: IC 12-12-5; 20 U.S.C. 107

Sec. 5. In order to be accepted for training in the business enterprise program, an applicant must:

(1) be legally blind;

(2) be at least eighteen (18) years of age;

(3) be a United States citizen;

(4) hold a high school diploma or equivalent;

(5) be a client of vocational rehabilitation services;

(6) be referred for the business enterprise program by vocational rehabilitation services;

(7) have adequate orientation and mobility skills to travel independently;

(8) have skills sufficient to communicate with the public in a courteous manner and the ability to develop and maintain working relationships with others;

(9) be able to maintain required records and reports;

(10) have mathematical skills sufficient to operate a small business; and

(11) have independent daily living skills sufficient to allow the applicant to meet personal care and facility maintenance needs.

(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 2-4-5; filed Aug 23, 2001, 2:30 p.m.: 25 IR 64)

460 IAC 2-4-6 Effect of nonqualification for the business enterprise program

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

Affected: IC 4-21.5; IC 12-12-5; 20 U.S.C. 107

Sec. 6. (a) If the state licensing agency determines that an applicant does not meet the qualifications set out in section 5 of this rule and does not accept the applicant as a manager trainee, the provisions in this section apply.

(b) The state licensing agency shall refer the applicant to the office of vocational rehabilitation services for other services.

(c) The state licensing agency shall notify an applicant in writing of the following:

(1) The specific grounds for the agency's determination that the applicant:

(A) does not meet the qualifications set out in section 5 of this rule; and

(B) is not accepted as a manager trainee in the business enterprise program.

(2) The applicant's right to a full evidentiary hearing, under the provisions of IC 4-21.5, the Administrative Orders and Procedures Act, on the agency's determination upon filing a written request with the deputy director of blind and visually impaired services within fifteen (15) business days of service of the notice.

(d) The applicant has the right to a full evidentiary hearing, under the provisions of IC 4-21.5, the Administrative Orders and Procedures Act, on the state licensing agency's determination that an applicant does not meet the qualifications set out in section 5 of this rule and is not accepted as a manager trainee in the BEP. For purposes of conducting a full evidentiary hearing, the procedures established in sections 29 and 30 of this rule apply; provided, however, that the provisions of section 30(w)(3) of this rule do not apply to this subsection. (*Division of Disability, Aging, and Rehabilitative Services; 460 IAC 2-4-6; filed Aug 23, 2001, 2:30 p.m.: 25 IR 65; errata filed Jan 10, 2002, 11:37 a.m.: 25 IR 1645*)

460 IAC 2-4-7 Manager trainees; training requirements

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

Affected: IC 12-12-5; 20 U.S.C. 107

Sec. 7. (a) Except as provided in section 8 of this rule, a manager trainee must successfully complete training for the BEP before being licensed as a manager.

(b) Training for the BEP includes the following:

(1) Classroom training in the skills necessary for the general operation of any type of BEP facility, including such topics as:

(A) accounting;

(B) banking;

(C) business administration;

(D) cash handling;

(E) communication;

(F) customer service;

(G) machine training;

(H) sanitation;

(I) marketing and inventory control; and

(J) orientation to all types of BEP facility operations.

(2) Training on specific types of BEP facilities.

(3) On-the-job training with a licensed manager or at a facility approved by the state licensing agency.

(4) Training on business enterprise program rules, requirements, policies, and procedures.

(5) Training on the application of federal, state, and local laws relating to operating a facility.

(*Division of Disability, Aging, and Rehabilitative Services; 460 IAC 2-4-7; filed Aug 23, 2001, 2:30 p.m.: 25 IR 65*)

460 IAC 2-4-8 Waiver or modification of training requirements

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

Affected: IC 12-12-5; 20 U.S.C. 107

Sec. 8. (a) A manager trainee may submit a written request to the state licensing agency for a waiver, in whole or in part, or a modification of the training requirements described in this rule. A manager trainee must also submit supporting documentation required by the state licensing agency.

(b) With the active participation of the Indiana committee of licensed managers, the state licensing agency may waive, in whole or in part, or modify the training requirements for a manager trainee on the basis of the manager trainee's previous work experience, knowledge, skills, or training.

(c) The probationary period for a manager trainee required under section 9 of this rule shall not be waived.

(d) If a manager trainee has received a waiver or modification of training requirements under this section, the manager

trainee's ranking on the placement list shall be determined by the date when BVIS received the manager trainee referral from vocational rehabilitation services. (*Division of Disability, Aging, and Rehabilitative Services; 460 IAC 2-4-8; filed Aug 23, 2001, 2:30 p.m.: 25 IR 65*)

460 IAC 2-4-9 Manager trainee; probationary period

Authority: IC 12-8-8-4; IC 12-9-2-3
Affected: IC 12-12-5; 20 U.S.C. 107

Sec. 9. (a) A manager trainee must successfully complete a probationary period before being licensed as a manager in the business enterprise program.

(b) The purpose of the probationary period is to improve the performance of the manager trainee by:

- (1) assisting the manager trainee to achieve the most effective adjustment to the business enterprise program and to the assigned facility;
- (2) assuring that the manager trainee is aware of and complies with:
 - (A) the rules and requirements of the BEP; and
 - (B) the terms of the permit for, or the agreement between the state licensing agency and the custodial authority of, the BEP facility to which the manager trainee is assigned;
- (3) evaluating the manager trainee's performance in the work setting or at an assigned BEP facility; and
- (4) referring a manager trainee in need of other or additional services to the office of vocational rehabilitation services.

(c) The probationary period begins when a manager trainee is placed in a BEP facility.

(d) The probationary period continues for at least ninety (90) calendar days after a manager trainee is placed in a BEP facility.

In addition, the state licensing agency may extend the probationary period for a maximum of sixty (60) calendar days in order to:

- (1) provide the manager trainee with additional or remedial training; or
- (2) achieve any purpose described in subsection (b).

(*Division of Disability, Aging, and Rehabilitative Services; 460 IAC 2-4-9; filed Aug 23, 2001, 2:30 p.m.: 25 IR 65*)

460 IAC 2-4-10 Manager trainees; disciplinary procedures

Authority: IC 12-8-8-4; IC 12-9-2-3
Affected: IC 12-12-5; 20 U.S.C. 107

Sec. 10. (a) This section applies to a manager trainee who is:

- (1) receiving initial training, including classroom or on-the-job training; or
- (2) in the probationary period.

(b) A manager trainee receiving initial training may be subject to disciplinary action as set out in this section for a violation of, or failure to comply with, a written rule or regulation of the training institution.

(c) A manager trainee in the probationary period may be subject to disciplinary action as set out in this section for a violation of, or failure to comply with:

- (1) the provisions of this rule applicable to a licensed manager;
- (2) the terms of an agreement between the state licensing agency and the manager trainee for operation of a BEP facility; or
- (3) the terms of the permit for, or the agreement between the state licensing agency and the custodial authority of, the BEP facility to which the manager trainee is assigned.
- (d) Documentation of disciplinary action shall be kept in the individual's personnel file.
- (e) Disciplinary actions shall include the following:
 - (1) Formal counseling.
 - (2) Written action plan.
 - (3) Suspension from training.
 - (4) Termination of training and participation in the BEP.

(f) Disciplinary action will progress through the steps listed in subsection (e) for:

- (1) the first violation or noncompliance under subsection (b) or (c);
- (2) a failure to correct a violation or noncompliance under subsection (b) or (c); or

(3) a repeated violation or noncompliance under subsection (b) or (c).

(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 2-4-10; filed Aug 23, 2001, 2:30 p.m.: 25 IR 66)

460 IAC 2-4-11 Termination of manager trainee's participation in the business enterprise program

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

Affected: IC 12-12-5; 20 U.S.C. 107

Sec. 11. (a) The state licensing agency may terminate a manager trainee's participation in the BEP for cause in accordance with 460 IAC 2-4-10 [section 10 of this rule].

(b) The state licensing agency may terminate a manager trainee's participation in the BEP at any of the following times:

(1) During training.

(2) During the probationary period.

(3) At the end of the probationary period and before licensing.

(c) If the state licensing agency determines that the participation of a manager trainee should be terminated, the following apply:

(1) The state licensing agency shall refer the manager trainee to the office of vocational rehabilitation services for other services.

(2) The state licensing agency shall notify the manager trainee, in writing, of the following:

(A) The specific grounds for the agency's determination that the manager trainee's participation in the BEP should be terminated.

(B) The manager trainee's right to a full evidentiary hearing on the agency's determination by filing a written request with the deputy director of blind and visually impaired services within fifteen (15) business days of service of the notice.

(3) The manager trainee has the right to a full evidentiary hearing on the state licensing agency's determination that the manager trainee's participation in the BEP should be terminated.

(4) For purposes of conducting a full evidentiary hearing, the procedures established in sections 29 and 30 of this rule apply; provided, however, that the provisions of section 30(w)(3) of this rule do not apply to this section.

(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 2-4-11; filed Aug 23, 2001, 2:30 p.m.: 25 IR 66; errata filed Jan 10, 2002, 11:37 a.m.: 25 IR 1645)

460 IAC 2-4-12 Issuance of license

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

Affected: IC 12-12-5; 20 U.S.C. 107

Sec. 12. (a) The state licensing agency shall issue a license to a manager trainee in the BEP who has successfully completed training and a probationary period.

(b) Upon licensing, a manager trainee becomes a licensed manager in the BEP.

(c) A license is issued for an indefinite period of time, but is subject to suspension or termination, after affording the licensed manager an opportunity for a full evidentiary hearing, except as provided in section 24 of this rule. *(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 2-4-12; filed Aug 23, 2001, 2:30 p.m.: 25 IR 67)*

460 IAC 2-4-13 Determination of visual status

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

Affected: IC 12-12-5; 20 U.S.C. 107

Sec. 13. (a) The state licensing agency has the right to request and to obtain from a licensed manager periodic visual evaluations in order to determine continuing compliance with visual requirements.

(b) Agency request for current evidence of visual status include the following:

(1) Upon the written request of the state licensing agency, a licensed manager must provide the state licensing agency with current ophthalmologic or optometric evidence documenting the manager's visual status within sixty (60) days of the agency's

request. As used in this subdivision, "current" means evidence of an examination no more than six (6) months old from the date of submitting the evidence to the state licensing agency.

(2) A licensed manager who does not provide the requested ophthalmologic or optometric evidence is presumed not to be legally blind. Action must be taken under section 20(b)(1) of this rule to terminate the manager's license.

(3) If a licensed manager is determined to be not legally blind on the basis of the submitted evidence, action must be taken under section 20(b)(1) of this rule to terminate the manager's license.

(4) A licensed manager shall pay the cost of obtaining ophthalmologic or optometric evidence required by this subsection.

(5) A licensed manager may enter as an allowable expense on the monthly financial report submitted to the state licensing agency, the cost of obtaining ophthalmologic or optometric evidence required by this subsection.

(c) The agency's right to obtain a second opinion as to visual acuity includes the following:

(1) Upon the written request of the state licensing agency, a licensed manager must submit to a visual acuity examination by an optometrist or physician selected by the state licensing agency, if the agency has information that a manager's vision has improved or does not meet the requirements of section 2(18) of this rule.

(2) The cost of an examination under this subsection shall be paid by the state licensing agency.

(3) A copy of all records of an examination under this subsection shall be provided to the licensed manager.

(4) If a licensed manager is determined to be not legally blind after an examination under this subsection, the provisions of section 20(b)(1) of this rule apply.

(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 2-4-13; filed Aug 23, 2001, 2:30 p.m.: 25 IR 67)

460 IAC 2-4-14 Selection of business enterprise program facility locations

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

Affected: IC 12-12-5; 20 U.S.C. 107

Sec. 14. (a) Determination of BEP facility locations include the following:

(1) The state licensing agency may establish a BEP facility at a particular location only if establishment of a facility at that location is likely to:

(A) contribute to the development of significant economic opportunities for blind persons; and

(B) provide for the productive use of program assets.

(2) The state licensing agency's determination under subsection (a) shall be made on the basis of an evaluation of relevant factors in a survey of the location. Factors to be evaluated include the following:

(A) Population.

(B) Traffic.

(C) Competition.

(D) Continued availability of the location.

(E) Type of premises.

(F) Potential return on investment.

(b) If the sales productivity of a BEP facility is adversely affected by factors beyond the control of the state licensing agency or of the operator, the state licensing agency must review and determine whether the location remains suitable for a BEP facility or for the current type of operation. The state licensing agency shall evaluate all relevant factors, including those set out in subsection (a)(2) in a review of the location. On the basis of this review, the state licensing agency may close a BEP facility or convert the existing facility to another type of operation. *(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 2-4-14; filed Aug 23, 2001, 2:30 p.m.: 25 IR 67)*

460 IAC 2-4-15 Assignment of a business enterprise program facility

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

Affected: IC 12-12-5; 20 U.S.C. 107

Sec. 15. (a) The assignment of a BEP facility shall be made by the state licensing agency with the active participation of the Indiana committee of licensed managers. A bidding process is used to promote upward mobility and to assign available BEP facilities.

(b) When a BEP facility becomes available, the state licensing agency will solicit bids for the facility from eligible persons on the placement list.

(c) Except as provided in subsection (d), the following persons will be placed on the placement list for the assignment of an available BEP facility and are eligible to bid for an available BEP facility:

(1) A licensed manager who has been operating the manager's current BEP facility for a minimum of one (1) year as of the date the bid on an available facility is due.

(2) A manager trainee who has successfully completed the training specified at section 7 of this rule, subject to the provisions of section 8 of this rule.

(3) A licensed manager who submits a letter requesting placement to the state licensing agency during an approved leave of absence.

(d) The following persons will not be placed on the placement list for the assignment of an available BEP facility and are not eligible to bid for an available BEP facility:

(1) A licensed manager who has been operating the manager's current BEP facility for less than one (1) year as of the date the bid on an available facility is due.

(2) A licensed manager or manager trainee who:

(A) accepts the award or assignment of a BEP facility; and

(B) subsequently refuses placement at, or withdraws acceptance of the award or assignment of, that BEP facility; is not eligible to bid for another BEP facility for a period of one (1) year from the date of acceptance; provided, however, that a licensed manager or manager trainee who has been awarded and has accepted a BEP facility, but who has not been placed in that facility through no fault of his or her own, will be placed on the placement list and is eligible to bid on an available BEP facility.

(e) Eligible bidders shall be evaluated by the state licensing agency, with the active participation of the Indiana committee of licensed managers, according to the following criteria and scoring system:

(1) Fifty percent (50%) of the bidder's seniority as defined in section 2(31) of this rule.

(2) Add twenty-five percent (25%) of the bidder's seniority if, during the ten (10) month period ending on the date the bid is due:

(A) the bidder has not been on a disciplinary action plan; or

(B) the bidder's license has not been suspended.

(3) Add one percent (1%) of the bidder's seniority for any monthly financial report that is submitted to the state licensing agency when due during the ten (10) month period ending on the date the bid is due, for a maximum addition of ten percent (10%) of the bidder's seniority.

(4) Add ten percent (10%) of the bidder's seniority if, during the ten (10) month period ending on the date the bid is due:

(A) the custodial authority of the bidder's BEP facility has not made a written complaint to the state licensing agency or to BVIS concerning the operations of the bidder's BEP facility; or

(B) all of the following have occurred:

(i) The custodial authority of the bidder's BEP facility has made a written complaint to the state licensing agency or to BVIS alleging that the bidder has violated the terms of the permit, or contract between the custodial authority and the state licensing agency, for the bidder's BEP facility.

(ii) The state licensing agency or BVIS has given the bidder written notice of the complaint.

(iii) The bidder has corrected, or taken reasonable steps to correct, the alleged violation.

(iv) The state licensing agency or BVIS has given the bidder written notice that the problem has been corrected or resolved, or in the alternative, the state licensing agency or BVIS has not taken disciplinary action against the bidder as a result of the complaint.

(5) Add five percent (5%) of the bidder's seniority if the bidder has attended or participated in a training activity or conference sponsored in whole or in part, or approved in advance, by the state licensing agency during the ten (10) month period ending on the date the bid is due.

(f) The state licensing agency or BVIS shall offer the assignment of the facility to the eligible bidder with the highest numeric score. The state licensing agency or BVIS shall notify the successful bidder in writing of the offer of an available facility position to that bidder. By 3 p.m. on the tenth business day after receipt of the agency's letter, the successful bidder must notify the state licensing agency or BVIS, in writing, that the offer is accepted or refused. Refusal of an offer is final and irrevocable. A failure to

respond within the required time period is deemed a refusal of an offer.

(g) If the bidder with the highest numeric score does not accept the assignment of the facility, the state licensing agency or BVIS shall continue to offer the assignment of the facility to eligible bidders in declining numeric order from the highest numeric score until:

- (1) an eligible bidder accepts the assignment; or
- (2) all eligible bidders have been offered the assignment.

(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 2-4-15; filed Aug 23, 2001, 2:30 p.m.: 25 IR 68)

460 IAC 2-4-16 Temporary operators; assignment of temporary location

Authority: IC 12-8-8-4; IC 12-9-2-3
Affected: IC 12-12-5; 20 U.S.C. 107

Sec. 16. (a) The state licensing agency, with the active participation of the Indiana committee of licensed managers, may place a temporary operator in a BEP facility under any of the following circumstances:

- (1) No eligible person bids on a BEP facility.
- (2) No eligible person accepts the assignment of a BEP facility.
- (3) An operator for a BEP facility is not otherwise available.

(b) If a BEP facility is temporarily not assigned to a licensed manager or manager trainee, or if a temporary operator is needed for a BEP facility, the following priorities will be used in assigning a temporary operator to the facility:

- (1) A licensed manager displaced from the manager's facility through no fault of the manager, for example, due to the permanent or temporary closing of a BEP facility, is given first priority on any unassigned temporary location. If more than one (1) displaced licensed manager is eligible, selection will be based on seniority.
- (2) If a displaced licensed manager is not available for placement or does not accept the placement, the location will be offered next to eligible manager trainees. If more than one (1) manager trainee is eligible, the manager trainee with the most seniority will be selected.
- (3) If a manager trainee is not available for placement or does not accept the placement, the location will be offered next to the licensed manager whose legal residence is closest in physical proximity to the unassigned temporary location. If more than one (1) licensed manager meets the proximity requirement, the licensed manager with the most seniority will be selected.
- (4) In selecting a temporary operator, the state licensing agency shall give priority to qualified blind persons. A qualified sighted person may be placed as a temporary operator only after the state licensing agency determines that a qualified blind person is not available.

(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 2-4-16; filed Aug 23, 2001, 2:30 p.m.: 25 IR 69)

460 IAC 2-4-17 Operator agreement

Authority: IC 12-8-8-4; IC 12-9-2-3
Affected: IC 12-12-5; 20 U.S.C. 107

Sec. 17. An operator must enter into a written agreement with the state licensing agency for the operation of an assigned BEP facility. A new agreement must be executed each time an operator moves or transfers to another BEP facility. *(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 2-4-17; filed Aug 23, 2001, 2:30 p.m.: 25 IR 69)*

460 IAC 2-4-18 Leave of absence

Authority: IC 12-8-8-4; IC 12-9-2-3
Affected: IC 12-12-5; 20 U.S.C. 107

Sec. 18. (a) A licensed manager may request and take an approved leave of absence for a period up to twenty-four (24) months for the following purposes:

- (1) Medical leave for a licensed manager's own serious health condition that prevents the licensed manager from performing any of the essential functions at the manager's assigned BEP facility.
- (2) Medical leave to care for the licensed manager's spouse, parent, child, or other legal dependent, who has a serious health

condition and who is dependent on the manager for care.

(3) Leave in conjunction with the birth or placement of a child for adoption or foster care, as long as the leave concludes within twelve (12) months following the birth or placement.

(4) Vision rehabilitation.

(b) At least fifteen (15) business days in advance, the licensed manager shall submit a written notice to the state licensing agency of the following:

(1) Manager's intent to take a leave of absence.

(2) The purpose of the leave.

(3) The dates and expected duration of the leave.

If fifteen (15) business days' notice is not possible, the manager shall give notice as soon as practicable. The state licensing agency shall send a written response to the manager and shall indicate whether the leave is approved as requested. Upon request from the state licensing agency, the licensed manager shall provide medical documentation of the need for the leave and concerning the duration of the leave.

(c) If a leave of absence is for six (6) months or less, a licensed manager has the right to retain the assigned BEP facility throughout the period of the leave. A licensed manager must select an individual, approved in advance by the state licensing agency, to operate the facility in the manager's absence. During the leave, the licensed manager shall remain responsible for the submission of monthly reports and all related duties of the licensed manager. If the licensed manager requests an extension of a leave beyond six (6) months from the beginning of the approved leave, the provisions of subsection (d) shall apply.

(d) Leave of absence for a period greater than six (6) months and up to two (2) years. If the leave of absence is for a period greater than six (6) months, a licensed manager shall not have the right to retain the manager's assigned BEP facility, and the following requirements apply:

(1) The state licensing agency shall assign a temporary operator to the BEP facility until the bidding and assignment process set out in section 15 of this rule is completed.

(2) At any time before the end of an approved leave period, the licensed manager may submit to the state licensing agency a written request for reinstatement in the business enterprise program and for assignment to a BEP facility. At the manager's written request, the state licensing agency shall place the licensed manager's name on the placement list for assignment to an available BEP facility.

(3) The licensed manager must notify the state licensing agency, in writing, at least thirty (30) days before the end of the approved leave period of the following:

(A) That the manager requests to be placed on the placement list for assignment to a BEP facility.

(B) That the manager does not wish to participate in the business enterprise program and agrees to the termination of the manager's license.

(e) The manager's license may be suspended for thirty (30) days according to disciplinary procedures under any of the following circumstances:

(1) The manager fails to return to the facility upon completion of the leave.

(2) The manager fails to comply with subsection (d)(3).

(3) The manager fails to obtain prior approval from the state licensing agency for a leave extension allowable under this section.

(f) The state licensing agency may require specific training of a licensed manager upon returning from a leave of absence of one (1) year or more.

(g) After a leave of absence, a licensed manager requesting assignment to a BEP facility may request additional training, subject to the provisions of section 19 of this rule concerning continuing education. (*Division of Disability, Aging, and Rehabilitative Services; 460 IAC 2-4-18; filed Aug 23, 2001, 2:30 p.m.: 25 IR 69*)

460 IAC 2-4-19 Continuing education

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

Affected: IC 12-12-5; 20 U.S.C. 107

Sec. 19. (a) In-service training activities will be conducted for licensed managers to:

(1) develop business management and marketing skills; and

- (2) enhance their ability to run a profitable facility.
- (b) Training requests may be approved by the state licensing agency based on:
 - (1) the availability of training resources; and
 - (2) a licensed manager's need to receive requested training.
- (c) If training is provided to a licensed manager at the manager's request, the licensed manager has the right to retain the assigned BEP facility upon the completion of training.
 - (d) Specific training may be required of the licensed manager in any of the following situations:
 - (1) The assigned BEP facility changes or expands to include management responsibilities in which the licensed manager is not qualified or has not had experience or training within the past one (1) year period.
 - (2) Equipment is placed in the location with which the licensed manager has had no training or experience within the past one (1) year period.
 - (3) A licensed manager is transferred to a new location that includes management responsibilities in which the licensed manager has not had experience within the past one (1) year period.
 - (4) A licensed manager returns from a leave of absence of one (1) year or more.
 - (5) Training is required by the state licensing agency under a written action plan.

(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 2-4-19; filed Aug 23, 2001, 2:30 p.m.: 25 IR 70)

460 IAC 2-4-20 Termination of manager's license

Authority: IC 12-8-8-4; IC 12-9-2-3
Affected: IC 12-12-5; 20 U.S.C. 107

Sec. 20. (a) A manager's license terminates automatically, without further notice, if any of the following occur:

- (1) Death of a licensed manager.
- (2) A licensed manager's resignation or withdrawal from the business enterprise program.
- (3) A licensed manager's retirement from the business enterprise program.
- (b) A manager's license will be terminated if:
 - (1) the manager's vision improves to the extent that the manager is no longer legally blind; or
 - (2) extended illness or incapacity of the manager prevents the manager's personal operation of the facility, when there is no reasonable expectation, based on medical evidence, that the manager will be able to return to work.
- (c) A manager's license may be terminated for cause as set out in section 27 of this rule. *(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 2-4-20; filed Aug 23, 2001, 2:30 p.m.: 25 IR 70)*

460 IAC 2-4-21 Disciplinary procedures for licensed managers

Authority: IC 12-8-8-4; IC 12-9-2-3
Affected: IC 12-12-5; 20 U.S.C. 107

Sec. 21. (a) Disciplinary actions shall include the following:

- (1) Formal counseling.
- (2) Written action plan.
- (3) Immediate suspension without notice.
- (4) Disciplinary suspension.
- (5) Loss of assigned BEP facility.
- (6) Termination of license.
- (b) At any time discipline is imposed, a licensed manager shall be informed of the right to file a grievance under section 28 of this rule.
- (c) Except as provided in section 24 of this rule (immediate suspension), a licensed manager shall be advised of the opportunity for a full evidentiary hearing before:
 - (1) disciplinary suspension;
 - (2) loss of the manager's facility; or
 - (3) termination of the manager's license.

(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 2-4-21; filed Aug 23, 2001, 2:30 p.m.: 25 IR 71)

460 IAC 2-4-22 Disciplinary procedures; formal counseling

Authority: IC 12-8-8-4; IC 12-9-2-3
Affected: IC 12-12-5; 20 U.S.C. 107

Sec. 22. (a) Formal counseling is a discussion, in person or by telephone, between a licensed manager and a business counselor or other staff of the state licensing agency. The discussion must be documented, in writing, in the state licensing agency's file for the manager.

(b) In formal counseling, a licensed manager will be advised of the following:

- (1) That the discussion is a formal counseling session under the state licensing agency disciplinary procedures.
- (2) The specific nature of the action or violation complained of.
- (3) The corrective action required.
- (4) The date when corrective action must be completed.
- (5) The consequences of failure to comply with corrective action.
- (6) The consequences of repeated violation.

(c) Formal counseling shall be used for the first violation of a rule, policy, or the terms of an agreement or permit for a BEP facility, except for any of the following, for which a higher level of discipline may result:

- (1) The state licensing agency reasonably determines that public health, safety, or welfare is in danger due to the manager's operations.
- (2) The state licensing agency reasonably determines that the permit for a BEP facility is in jeopardy due to the manager's operations.
- (3) The state licensing agency reasonably determines that a BEP facility contract between the custodial authority of the facility and the state licensing agency is in jeopardy due to the manager's operations.

(d) The state licensing agency staff member conducting a formal counseling session shall send a written report of the session to the licensed manager. The report shall be in an accessible format designated by the licensed manager. The report shall include the information required in subsection (b). A copy of the report will be kept in the manager's file in the state licensing agency.

(e) A licensed manager shall have the right to submit written comments regarding the report to the state licensing agency. If the manager does so, the written comments will be kept in the manager's file in the state licensing agency.

(f) An action or violation that results in formal counseling may be the basis for a written action plan if the action or violation:

- (1) is not corrected as requested in the formal counseling report; or
- (2) that is the basis for formal counseling is repeated.

(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 2-4-22; filed Aug 23, 2001, 2:30 p.m.: 25 IR 71)

460 IAC 2-4-23 Disciplinary procedures; written action plan

Authority: IC 12-8-8-4; IC 12-9-2-3
Affected: IC 12-12-5; 20 U.S.C. 107

Sec. 23. (a) A written action plan must notify a licensed manager of the following:

- (1) The specific nature of the action or violation complained of.
- (2) The corrective action required.
- (3) The date for completing corrective action.
- (4) The consequence of failure to correct the problem.
- (5) The consequence of a repeated violation.

(b) A written action plan shall be presented to a licensed manager in a meeting between the licensed manager and a business counselor or the business enterprise program director of the state licensing agency. The licensed manager may be represented at this meeting at the manager's expense.

(c) The licensed manager will be required to correct the action or violation within a specific, reasonable time period.

(d) The licensed manager must remain free of the action or violation complained of in the written action plan for a period of one hundred eighty (180) days from the date in the action plan when corrective action must be completed.

(e) A licensed manager who receives three (3) written action plans within a twelve (12) month period may be subject to disciplinary suspension.

(f) An action or violation that results in an action plan may be the basis for disciplinary suspension if the action or violation is:

- (1) not corrected in accordance with the action plan; or
- (2) repeated or occurs again.

(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 2-4-23; filed Aug 23, 2001, 2:30 p.m.: 25 IR 71)

460 IAC 2-4-24 Disciplinary procedures; immediate suspension

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

Affected: IC 4-21.5-4; IC 12-12-5; 20 U.S.C. 107

Sec. 24. (a) The state licensing agency may seek from the director of the division the authority, pursuant to IC 4-21.5-4, to immediately suspend an operator agreement between the state licensing agency and a licensed manager, without a hearing prior to suspension, if the state licensing agency reasonably determines that:

- (1) the public health, safety, or welfare is in danger due to the manager's operations;
- (2) the permit for the BEP facility is in jeopardy due to the manager's operations;
- (3) the BEP facility contract between the custodial authority of the facility and the state licensing agency is in jeopardy due to the manager's operations; or
- (4) a licensed manager has abandoned the manager's assigned BEP facility.

(b) Pursuant to such authorization, the licensed manager's operation of the facility shall be suspended immediately. The manager shall cease operation of the facility during the period of suspension. The operation of the facility shall continue under the authority of the state licensing agency.

(c) The state licensing agency shall promptly notify the licensed manager of the immediate suspension of the operator agreement by certified mail or personal service. The notice of suspension shall inform the licensed manager of the following:

- (1) The effective date of the suspension.
- (2) The duration of the suspension.
- (3) The violation or action that is the basis for the suspension.
- (4) The consequence of failure to correct the violation or action after the suspension.
- (5) The consequence of a repeated violation after the suspension.
- (6) The manager's right to:
 - (A) file a grievance or to appeal the state licensing agency's action; and
 - (B) a full evidentiary hearing.

(d) An immediate inventory of all stock, equipment, and documents shall be taken and recorded. The state licensing agency shall provide a copy of the inventory to the manager whose operator agreement has been suspended.

(e) The state licensing agency, with the active participation of the Indiana committee of licensed managers, shall select and place a temporary operator in the facility. The costs of a temporary operator will be charged to, and paid from, the facility's gross sales.

(f) The net proceeds from the facility shall be paid on a monthly basis to the manager whose operator agreement has been suspended.

(g) After an immediate suspension of an operator agreement under this section, the manager shall have the right to a full evidentiary hearing under section 30 of this rule. To exercise that right, the manager must file a written request with the director of the division for a full evidentiary hearing. The written request must be filed within fifteen (15) business days after service of the written notice of immediate suspension of the operator agreement.

(h) If an immediate suspension under this section is found to be contrary to law after a full evidentiary hearing and after formal administrative review is complete, the licensed manager shall be reimbursed for the costs of the temporary operator. *(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 2-4-24; filed Aug 23, 2001, 2:30 p.m.: 25 IR 72)*

460 IAC 2-4-25 Disciplinary procedures; disciplinary suspension

Authority: IC 12-8-8-4; IC 12-9-2-3
Affected: IC 12-12-5; 20 U.S.C. 107

Sec. 25. (a) Disciplinary suspension of a licensed manager's operation of an assigned BEP facility for a minimum of thirty (30) calendar days may result from any of the following:

- (1) Failure to comply with a written action plan.
- (2) An action or a violation that is the basis of a written action plan is repeated following the written action plan.
- (3) A licensed manager receives three (3) action plans within a period of twelve (12) months.
- (4) A licensed manager is imprisoned after conviction of a criminal offense.
- (5) A licensed manager fails, without reasonable justification, to:
 - (A) give the notice required under section 18 of this rule, regarding the end of a leave of absence;
 - (B) return to the manager's facility upon completion of an approved leave of absence; or
 - (C) obtain prior approval from the state licensing agency for an extension of a leave of absence allowable under section 18 of this rule.

(b) The state licensing agency shall promptly notify by certified mail or personal service a licensed manager whose license is proposed to be suspended. The notice of proposed suspension shall inform the licensed manager of the following:

- (1) The action or violation that forms the basis for the proposed suspension.
- (2) The duration of the proposed suspension.
- (3) The consequence of a failure to correct the violation or action after the proposed suspension.
- (4) The consequence of repeated violations after the proposed suspension.
- (5) The manager's right to a full evidentiary hearing before suspension of the manager's license.

(c) Except as provided in section 24 of this rule (immediate suspension without notice), a licensed manager must be afforded an opportunity for a full evidentiary hearing before suspension of the manager's license.

(d) If a licensed manager's operations are suspended after a full evidentiary hearing, the manager shall cease operation of the facility during the period of suspension. The operation of the facility shall continue under the authority of the state licensing agency.

(e) An immediate inventory of all stock, equipment, and documents shall be taken and recorded. The state licensing agency shall provide the suspended manager with a copy of the inventory.

(f) The state licensing agency, with the active participation of the Indiana committee of licensed managers, shall select and place a temporary operator in the facility. The costs of a temporary operator will be charged to, and paid by, the suspended manager from the facility's gross sales.

(g) The net proceeds from the facility shall be paid to the suspended manager on a monthly basis. (*Division of Disability, Aging, and Rehabilitative Services; 460 IAC 2-4-25; filed Aug 23, 2001, 2:30 p.m.: 25 IR 72; errata filed Jan 10, 2002, 11:37 a.m.: 25 IR 1645*)

460 IAC 2-4-26 Disciplinary procedures; loss of facility

Authority: IC 12-8-8-4; IC 12-9-2-3
Affected: IC 12-12-5; 20 U.S.C. 107

Sec. 26. (a) A licensed manager shall lose the manager's assigned BEP facility, and the facility agreement between the manager and the state licensing agency shall be terminated and canceled, if any of the following occurs:

- (1) An action or violation resulted in a suspension and was not corrected.
- (2) An action or violation resulted in a suspension, and the action or violation was repeated.
- (3) A licensed manager has a repeated violation or failure to comply with the terms of a:
 - (A) permit for a BEP facility assigned to the licensed manager; or
 - (B) contract between the state licensing agency and the custodial authority of a BEP facility assigned to the licensed manager.

(b) The state licensing agency shall promptly notify a licensed manager by certified mail or personal service if the agency proposes to terminate the manager's operations in the manager's assigned BEP facility under this section. The notice of proposed loss of facility shall inform the licensed manager of the following:

(1) The action or violation that forms the basis for the proposed loss of the manager's assigned BEP facility.

(2) The consequence of a repeated violation after the manager's loss of the assigned BEP facility.

(3) The manager's right to a full evidentiary hearing before loss of the manager's assigned BEP facility.

(c) A licensed manager must be afforded an opportunity for a full evidentiary hearing before loss of the assigned BEP facility under this rule.

(d) The loss of a facility by a licensed manager under this section shall not restrict the manager from bidding on another available facility; however, the manager shall not be awarded the facility that was lost under this section. (*Division of Disability, Aging, and Rehabilitative Services; 460 IAC 2-4-26; filed Aug 23, 2001, 2:30 p.m.: 25 IR 73*)

460 IAC 2-4-27 Disciplinary procedures; termination of license

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

Affected: IC 12-12-5; 20 U.S.C. 107

Sec. 27. (a) The state licensing agency may terminate a manager's license for any of the following reasons:

(1) An action or violation that resulted in a loss of a licensed manager's BEP facility is not corrected.

(2) An action or violation that resulted in a loss of a licensed manager's BEP facility is repeated.

(3) Violation of the BEP facility agreement between the state licensing agency and a licensed manager.

(4) Violation of the terms of the permit issued to the state licensing agency by the custodial authority of the BEP facility for the manager's assigned BEP facility.

(5) Violation of the terms of the BEP facility agreement between the state licensing agency and the custodial authority of the BEP facility for the manager's assigned BEP facility.

(6) Violation of this rule.

(7) Inability of a licensed manager to substantially comply with this rule for any reason.

(8) Conviction of a felony or misdemeanor that involves fraud, deceit, or misrepresentation.

(9) Continuing violation of state or local government health codes or laws, or failure to correct a violation of the health codes or laws.

(b) The state licensing agency shall promptly notify a licensed manager of a proposed license termination by certified mail or personal service. The notice shall inform a licensed manager of the following:

(1) The action or violation that is the basis for the proposed termination.

(2) The licensed manager's right to a full evidentiary hearing before termination of the manager's license.

(c) A licensed manager will be afforded an opportunity for a full evidentiary hearing before termination of the manager's license.

(d) If a manager's license is terminated, the state licensing agency shall refer the manager to the office of vocational rehabilitation services for other services. (*Division of Disability, Aging, and Rehabilitative Services; 460 IAC 2-4-27; filed Aug 23, 2001, 2:30 p.m.: 25 IR 73*)

460 IAC 2-4-28 Grievance procedures for licensed managers

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

Affected: IC 4-21.5-5; IC 12-12-5; 20 U.S.C. 107

Sec. 28. (a) At the time of licensing, a manager shall be informed of the right to, and the procedures for obtaining, administrative review, including a full evidentiary hearing, regarding a decision of the state licensing agency. A licensed manager shall be given access to this information in the manager's choice of Braille, large print, computer disk, or recorded tape.

(b) If a licensed manager disagrees with an action taken by the state licensing agency arising from the operation or administration of the BEP facility program, the licensed manager may file a written grievance with the deputy director of blind and visually impaired services within fifteen (15) business days of notification of the agency action complained of. The grievance must be filed in accordance with the procedures established in this section.

(c) Upon receiving a written grievance, the deputy director of blind and visually impaired services shall conduct informal administrative review under section 29 of this rule.

(d) If the aggrieved party is dissatisfied with the outcome of informal administrative review, the aggrieved party may file a

written request with the director of DDARS for a full evidentiary hearing. The written request must be filed within fifteen (15) business days after service of the written notice of the decision from informal administrative review. The hearing must be held before an impartial hearing officer appointed by the director or the director's delegate. The hearing officer shall conduct proceedings under IC 4-21.5 and file a recommended order with the parties and the director of DDARS under section 30 of this rule.

(e) If a party is dissatisfied with the recommended order of a hearing officer, a party may file written objections with the director of DDARS within fifteen (15) business days of service of the hearing officer's recommended order. The director shall conduct proceedings and enter a final order under section 30 of this rule.

(f) If the aggrieved party is dissatisfied with the final order of the director of DDARS under subsection (e), the aggrieved party may either:

(1) request that an arbitration panel be convened by filing a written complaint with the secretary of the United States Department of Education, as authorized by 20 U.S.C. 107d-1 and 34 CFR 395.13; or

(2) seek judicial review of the final order under IC 4-21.5-5.

(g) This section applies only to licensed managers. (*Division of Disability, Aging, and Rehabilitative Services; 460 IAC 2-4-28; filed Aug 23, 2001, 2:30 p.m.: 25 IR 74*)

460 IAC 2-4-29 Informal administrative review

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

Affected: IC 12-12-5; 20 U.S.C. 107

Sec. 29. (a) A licensed manager may file a written grievance with the deputy director of blind and visually impaired services within fifteen (15) business days of notification of the agency action complained of. The deputy director or deputy director's designee must hold an informal conference with the licensed manager within fifteen (15) business days of the receipt of the request, or within such other period of time agreed to by the licensed manager and the deputy director.

(b) Transportation, reader, or other communication services, if needed and requested, must be arranged for the licensed manager by the state licensing agency.

(c) The deputy director of blind and visually impaired services, or the deputy director's designee, shall file a written decision from the informal conference on the licensed manager within ten (10) business days of the conference.

(d) If the licensed manager disagrees with the written decision from the informal conference with the deputy director of blind and visually impaired services, or the deputy director's designee, the licensed manager may request a full evidentiary hearing. The request must be:

(1) made in writing; and

(2) filed with the director of DDARS within fifteen (15) days after service of the deputy director's decision in subsection (c).

(*Division of Disability, Aging, and Rehabilitative Services; 460 IAC 2-4-29; filed Aug 23, 2001, 2:30 p.m.: 25 IR 74*)

460 IAC 2-4-30 Formal administrative review; full evidentiary hearing procedures

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

Affected: IC 4-21.5-3; IC 12-8-8-5; IC 12-12-5; 20 U.S.C. 107

Sec. 30. (a) This section controls proceedings governed by IC 4-21.5 for which the director of DDARS is the ultimate authority.

(b) An affected person who is aggrieved by a determination of the deputy director of BVIS, or the deputy director's delegate, under section 29 of this rule may request formal administrative review and a full evidentiary hearing under IC 4-21.5 and this rule.

(c) The director of DDARS is the ultimate authority for the state licensing agency and DDARS under IC 4-21.5, under IC 12-8-8-5.

(d) As soon as practicable after the initiation of administrative review under this subsection, the director of DDARS shall appoint a hearing officer to conduct proceedings under IC 4-21.5 and this rule. The hearing officer shall be an impartial and qualified person who has no involvement either with the agency action at issue in the proceeding or with the administration or operation of the state licensing agency.

(e) A licensed manager has the right to be represented by counsel at the manager's own expense.

(f) Transportation, reader, or other communication services, if needed and requested, must be arranged for the licensed

manager by the state licensing agency.

(g) The hearing shall be held during regular business hours at the state licensing agency, or at such other location as the parties agree. The hearing shall be open to the public.

(h) The hearing officer shall notify the parties, in writing, of the time and place of the hearing. The hearing officer shall also notify the licensed manager of the manager's right to be represented by counsel at his or her own expense.

(i) If the issues in the proceeding are not otherwise resolved, the hearing officer shall conduct a full evidentiary hearing. The hearing officer shall govern the conduct of a hearing and the order of proof.

(j) The hearing officer shall avoid delay, maintain order, and make sufficient record of the proceedings for a full and true disclosure of the facts and issues. To accomplish these ends, the hearing officer shall have all powers authorized by law and may make all procedural and evidentiary rulings necessary for the conduct of the hearing. Unless inconsistent with IC 4-21.5 or this rule, the hearing officer may apply the Indiana Rules of Trial Procedure or the Indiana Rules of Evidence.

(k) Both the licensed manager and the state licensing agency are entitled to present oral or documentary evidence, to submit rebuttal evidence, and to conduct such examination and cross-examination of witnesses as may be necessary for a full and true disclosure of all facts bearing on the issues.

(l) All papers and documents introduced into evidence at the hearing shall be filed with the hearing officer at the hearing, and a copy shall be provided to the other party. All such documents and other evidence submitted shall be open to examination by the parties, and opportunities shall be given to refute facts and arguments advanced on either side of the issues.

(m) A transcript shall be made of the oral evidence and shall be made available to the parties. The state licensing agency shall pay all transcript costs and shall provide the manager with one (1) copy of the transcript.

(n) The record required to be kept by a hearing officer under IC 4-21.5-3-14 commences when a proceeding is initiated and includes the items described in IC 4-21.5-3-33.

(o) The hearing officer shall issue a written recommended order within thirty (30) business days after the receipt of the official transcript. The recommended order shall be mailed promptly to the licensed manager, the state licensing agency, and the ultimate authority of the agency.

(p) The recommended order of the hearing officer shall set forth the principal issues and relevant facts adduced at the hearing, and the applicable provisions in law, regulation, and agency policy. The order and decision shall contain findings of fact and conclusions with respect to each of the issues, and the reasons and basis therefor. The decision shall also set forth any remedial action necessary to resolve the issues in dispute.

(q) Subject to the provisions of subsections (s) through (u), after a hearing officer issues a recommended order under this section, the director or the director's designee shall issue a final order within thirty (30) business days. The final order shall:

- (1) affirm;
- (2) modify; or
- (3) dissolve;

the hearing officer's order. The director or the director's designee may remand the matter, with or without instructions, to the hearing officer for further proceedings.

(r) In the absence of a party's objection or notice from the director of intent to review any issue related to the order under subsection (s) or (t), the director or the director's designee shall affirm the order.

(s) To preserve an objection to an order of a hearing officer for judicial review, a party who is dissatisfied with the order must not be in default under IC 4-21.5 and must object to the order, in writing, that:

- (1) identifies the basis of the objection with reasonable particularity; and
- (2) is filed with the director responsible for reviewing the order within fifteen (15) days after the order is served on the party.

(t) If an objection is filed, the director of DDARS or the director's designee will conduct proceedings to issue a final order. In these proceedings, the director or the director's designee shall afford each party an opportunity to present briefs. The director or the director's designee may:

- (1) afford each party an opportunity to present oral argument;
- (2) exercise the powers of a hearing officer to hear additional evidence under IC 4-21.5-3-25 and IC 4-21.5-3-26; or
- (3) allow nonparties to participate in the proceeding in accordance with IC 4-21.5-3-25.

(u) If no objection to the order of the hearing officer is filed, the director of DDARS or the director's designee may serve written notice of the director's intent to review any issue related to the order within thirty (30) days of service of the hearing officer's recommended order. The notice shall be served on all parties. The notice must identify the issues that the director or the director's

designee intends to review. In these proceedings, the director or the director's designee shall afford each party an opportunity to present briefs. The director or the director's designee may:

- (1) afford each party an opportunity to present oral argument;
 - (2) exercise the powers of a hearing officer to hear additional evidence under IC 4-21.5-3-25 and IC 4-21.5-3-26; or
 - (3) allow nonparties to participate in the proceeding in accordance with IC 4-21.5-3-25.
- (v) A final order disposing of the proceeding, or an order remanding an order to the hearing officer for further proceedings shall be issued within thirty (30) days after the latter of:

- (1) the date that the hearing officer's order was issued;
- (2) the receipt of briefs or written comments; or
- (3) the close of oral arguments.

After remand of an order to a hearing officer under this subsection, the hearing officer's subsequent order is also subject to review under this section.

- (w) The final order of the director of DDARS or the director's designee must:
- (1) identify any differences between the director's final order and the recommended order issued by the hearing officer;
 - (2) include findings of fact or incorporate the findings of fact in the hearing officer's recommended order by express reference to the recommended order;
 - (3) inform a licensed manager that, if the licensed manager is dissatisfied with the final order issued by the director of DDARS or the director's designee, the licensed manager may request that an arbitration panel be convened by filing a complaint with the Secretary of the Department of Education, as authorized by 20 U.S.C. 107d-1 and 34 CFR 395.13; and
 - (4) inform a party of the right to seek judicial review of the final order pursuant to IC 4-21.5-5.

(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 2-4-30; filed Aug 23, 2001, 2:30 p.m.: 25 IR 75)

460 IAC 2-4-31 Business enterprise program facility equipment and inventory

Authority: IC 12-8-8-4; IC 12-9-2-3
Affected: IC 12-12-5; 20 U.S.C. 107

Sec. 31. (a) Requirements concerning inventory and equipment are as follows:

- (1) Start-up inventory purchased by the state licensing agency as part of the vocational rehabilitation plan is the property of the licensed manager.
- (2) The state is the owner of the BEP facility equipment purchased by the state licensing agency for BEP facilities under 20 U.S.C. 107b and 34 CFR 395.4.
- (3) The use of BEP equipment is limited to the purposes designated by the state licensing agency for the business enterprise program.

(b) Requirements for the repair of facility equipment are as follows:

- (1) A licensed manager is responsible for the periodic maintenance of equipment furnished by the state licensing agency and shall provide the care necessary to maintain the equipment in good condition and repair, excluding ordinary wear.
- (2) A licensed manager who fails to maintain the BEP facility and equipment in good repair will be subject to disciplinary action.
- (3) The state licensing agency shall give written notice to a licensed manager to perform or to make arrangements for, necessary maintenance or repairs within a specific, reasonable period of time. If the manager does not comply with the notice, the state licensing agency shall make arrangements for necessary maintenance or repairs.
- (4) If the state licensing agency has arranged for necessary maintenance or repairs under subdivision (3), the licensed manager shall reimburse the state for the costs thereof within:

- (A) thirty (30) days of the manager's receipt of the bill; or
- (B) a longer time period agreed to by the licensed manager and the state licensing agency.

(c) Requirements for the replacement of facility equipment are as follows:

- (1) The state licensing agency will replace worn out, severely damaged, or obsolete equipment in a BEP facility, subject to the requirements of subdivision (2).
- (2) Replacement of equipment described in subdivision (1) will be based on consideration of all of the following criteria:
 - (A) The need for equipment replacement as determined by the state licensing agency.

- (B) If requested, the manager's providing the state licensing agency with written documentation of the need for equipment replacement.
- (C) A request from the custodial authority of the BEP facility.
- (D) The approval of the custodial authority of the BEP facility if the equipment is not listed among the equipment allowed under the permit for the facility or the contract between the state licensing agency and the custodial authority.
- (E) The availability of funding.

(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 2-4-31; filed Aug 23, 2001, 2:30 p.m.: 25 IR 76)

460 IAC 2-4-32 Relocation, installation, renovation of a business enterprise program facility

Authority: IC 12-8-8-4; IC 12-9-2-3
Affected: IC 12-12-5; 20 U.S.C. 107

Sec. 32. (a) The installation, modification, relocation, removal, or renovation of a BEP facility shall be subject to the prior approval and supervision of the state licensing agency and the custodial authority responsible for the property on which the facility is located, in consultation with the licensed manager.

(b) The cost of relocation initiated by the state licensing agency shall be paid by the state licensing agency.

(c) The cost of relocation initiated by the custodial authority shall be paid by that entity, subject, however, to the terms of the permit for the BEP facility, or to the terms of the facility agreement entered into by the custodial authority and the state licensing agency. *(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 2-4-32; filed Aug 23, 2001, 2:30 p.m.: 25 IR 77)*

460 IAC 2-4-33 Set-aside funds

Authority: IC 12-8-8-4; IC 12-9-2-3
Affected: IC 12-12-5; 20 U.S.C. 107

Sec. 33. (a) Operator-assessed set-aside funds accrue for use in the BEP for only the following purposes:

- (1) Maintenance and replacement of equipment.
- (2) The purchase of new equipment.
- (3) Management services, including administrative costs of the Indiana committee of licensed managers.
- (4) Assuring a fair minimum return to licensed managers.
- (5) The establishment and maintenance of retirement or pension funds, health insurance contributions, and provision for paid sick leave and vacation time, if a majority vote of managers licensed by the state licensing agency determines that funds should be set aside for such purposes.

(b) Every operator of a BEP facility, including licensed managers, manager trainees, and temporary operators, must set aside a portion of the net proceeds from the operator's assigned BEP facility or facilities in accordance with the following:

(1) The percentage of net proceeds to be set aside will be determined and reviewed annually by the state licensing agency with the active participation of Indiana committee of licensed managers in accordance with 34 CFR 395.9.

(2) The percent of net proceeds required to be set aside will be based on the estimated amount of revenue needed by the state licensing agency to fund only the following:

- (A) The maintenance and replacement of equipment.
- (B) The purchase of new equipment, subject, however, to the requirement that the state licensing agency will use funds from the office of vocational rehabilitation to purchase new equipment whenever possible.
- (C) Management services performed by the state licensing agency.
- (D) Assuring a fair minimum return to licensed managers.
- (E) The establishment and maintenance of retirement or pension funds, health insurance contributions, and provision for paid sick leave and vacation time if a majority vote of managers licensed by the state licensing agency determines that funds should be set aside for the purposes set out in this clause.

(3) The percentage determined in subdivision (2) shall become effective upon:

- (A) approval by the Secretary of the United States Department of Education; and
- (B) written notification to all operators of the approval by the Secretary of the United States Department of Education.

(4) The percentage approved under this subsection will remain in effect until changed in accordance with this section.

(c) Each operator shall pay the approved set-aside to the state licensing agency for any given month by the fifteenth of the following month, if assessed in accordance with this section. (*Division of Disability, Aging, and Rehabilitative Services; 460 IAC 2-4-33; filed Aug 23, 2001, 2:30 p.m.: 25 IR 77*)

460 IAC 2-4-34 Allowable business expenses

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

Affected: IC 12-12-5; 20 U.S.C. 107

Sec. 34. (a) Each operator must file with the state licensing agency a written monthly report of the gross income, the allowable business expenses paid by the operator, and the net proceeds of the assigned BEP facility or facilities. The report must be filed in a form set by the state licensing agency.

(b) Allowable business expenses are expenses that are:

- (1) paid by an operator for the operation of a BEP facility;
- (2) allowed by the Internal Revenue Service; and
- (3) in an amount allowed by the Internal Revenue Service.

(c) Allowable business expenses include the following expenses:

- (1) The cost of goods sold. "Goods" means stock or merchandise purchased for resale in a BEP facility.
- (2) Supplies, which means expendable items that are necessary for day-to-day facility operation, but are not for resale.
- (3) Merchandise delivery charge, which means an additional cost, above the cost of stock or supplies, assessed for making a delivery to a BEP facility.
- (4) Pest exterminating service.
- (5) Janitorial service, which means a commercial firm or independent contractor to clean the facility or to remove trash. Such costs are deductible unless the state licensing agency or the custodial authority assigns this responsibility to someone other than the operator.
- (6) Bookkeeping and bank fees directly related to the facility operation.
- (7) Required business licenses.
- (8) Telephone charges, which means the cost for any reasonably necessary business telephone service, including long distance telephone calls for BEP facility business and in fulfillment of BEP committee responsibilities.
- (9) Purchase, rental, or laundry costs for uniforms and linens used in the BEP facility provided that the costs for uniforms are allowed if uniforms are worn only for work at the BEP facility.
- (10) Business advertising not to exceed, in a calendar year, the greater of:
 - (A) one percent (1%) of the facility's gross annual income for the prior year; or
 - (B) three hundred dollars (\$300).
- (11) Premiums for insurance coverage for BEP business operations and liability for property damage and bodily injury, except that insurance premiums for state-owned equipment shall not be deductible.
- (12) Rent if required by contract for space.
- (13) Utilities for the facility when not included in rent.
- (14) Wages, paid leave time, and other fringe benefits for an employee who is not a party to an agreement or a temporary operator agreement with the state licensing agency.
- (15) Coverage for Social Security, workers' compensation, and unemployment compensation, as required by law for an employee who is not a party to an operator agreement with the state licensing agency.
- (16) Sales taxes.
- (17) Business-related legal fees.
- (18) Short term training expenses of reasonable cost for operators and employees if the training is directly related to the job.
- (19) Temporary operator fees paid in accordance with this rule.
- (20) Travel expenses if required for BEP business purposes.
- (21) Air conditioner filter service and fire extinguisher service.
- (22) A vision exam if required in accordance with section 13(b) of this rule.
- (23) Payments to the custodial authority of the assigned BEP facility if the payments are required under:
 - (A) the permit issued to the state licensing agency for the BEP facility; or

(B) the facility agreement between the state licensing agency and the custodial authority of the BEP facility.

(24) Payment of an expense that is the responsibility of the state licensing agency with the prior approval of the BEP business counselor or program director. The person giving such approval shall document the approval, in writing, in the facility file.

(25) Personal property taxes assessed by a governmental entity.

(26) Business dues not to exceed, in a calendar year, the greater of:

(A) one percent (1%) of the facility's gross annual income for the prior year; or

(B) three hundred dollars (\$300).

(27) Charitable contributions, grants, and other donations to 501(c)(3) organizations.

(28) Entertainment expenses directly related to BEP facility operations.

(29) Postage expenses required to support BEP facility operations.

(30) Cost of equipment repairs or maintenance.

(31) Any other reasonable, necessary, and allocable expense the state licensing agency approves in writing.

(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 2-4-34; filed Aug 23, 2001, 2:30 p.m.: 25 IR 78)

460 IAC 2-4-35 Distribution and use of income from vending machines not designated as part of a manager's facility on federal property

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

Affected: IC 12-12-5; 20 U.S.C. 107

Sec. 35. (a) The state licensing agency shall disburse income received from vending machines on federal property, when those machines are not designated as part of a BEP facility, in accordance with the requirements in this section.

(b) The state licensing agency shall disburse that income to a licensed manager or managers operating a BEP facility on the same federal property. However, the total amount of income disbursed to a licensed manager shall not exceed the maximum amount allowed under 34 CFR 395.32 and 34 CFR 395.8(a).

(c) If the income from such vending machines exceeds the maximum amount that may be disbursed to a licensed manager under subsection (a), the additional income shall accrue to the state licensing agency for the following purposes:

(1) The income shall be used first for:

(A) the establishment and maintenance of retirement or pension plans;

(B) health insurance contributions; or

(C) the provision of paid sick leave and vacation time for licensed managers in the state;

if a majority vote of managers licensed by the state licensing agency determines that funds should be used for such purposes.

(2) Any vending machine income not necessary for the purposes set out in subdivision (1), shall be used by the state licensing agency for the following purposes:

(A) The maintenance and replacement of equipment.

(B) The purchase of new equipment.

(C) Management services.

(D) Assuring a fair minimum return to licensed vendors.

(3) Any assessment or set-aside charged to licensed managers shall be reduced pro rata in an amount equal to the total of such remaining vending machine income.

(d) If there is no licensed manager operating a BEP facility on the same federal property, the income shall accrue to the state licensing agency for the purposes set out in subsection (c).

(e) The state licensing agency shall disburse vending machine income under this section on at least a quarterly basis. *(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 2-4-35; filed Aug 23, 2001, 2:30 p.m.: 25 IR 79)*

460 IAC 2-4-36 Operation of facility; business requirements

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

Affected: IC 12-12-5; 20 U.S.C. 107

Sec. 36. (a) A licensed manager must comply with the business requirements set forth in this section. Failure to comply with these business requirements will result in disciplinary action under section 21 of this rule.

(b) A licensed manager and the manager's employees shall not discriminate against any person in furnishing, or by refusing to furnish, to such person the use of any BEP facility, including any and all goods, services, privileges, accommodations and activities provided by the facility, on the basis of sex, race, age, creed, color, national origin, physical or mental disability, or political affiliation.

(c) A licensed manager is responsible for the operations and profitability of the assigned BEP facility.

(d) A licensed manager must comply with the terms of:

(1) the agreement between the state licensing agency and the licensed manager; and

(2) either:

(A) the permit issued to the state licensing agency for the BEP facility; or

(B) the facility agreement between the custodial authority of the facility and the state licensing agency.

(e) A licensed manager is a self-employed person and must comply with all applicable federal, state, and local laws, regulations, and ordinances, including, but not limited to, those applicable to taxes, worker's compensation, unemployment insurance, and Social Security.

(f) A licensed manager must operate the BEP facility in compliance with applicable health, sanitation, and building codes and ordinances.

(g) The accounting records for a BEP facility shall be kept separate from the accounting records for any other business venture.

(h) A BEP facility shall not be used for the operation of any business venture except a business operated under IC 12-12-5, this rule, or the facility agreement between the licensed manager and the state licensing agency. BEP money, product, equipment, and assets shall not be used in, or commingled with the assets of, any other business venture.

(i) A licensed manager must:

(1) accurately complete all reports and forms approved by the state licensing agency and developed with the active participation of the Indiana committee of licensed managers; and

(2) submit the reports and forms to the state licensing agency within established time frames.

(j) A licensed manager must file the following reports with the state licensing agency on forms prescribed by BVIS:

(1) A written monthly report of the gross income, the allowable business expenses paid, and the net income of the assigned BEP facility or facilities. The report for any month is due and must be filed with the state licensing agency by the close of business on the fifteenth day of the following month, except that, if the fifteenth day is on a Saturday, a Sunday, a legal holiday as defined by state statute, or a day when state offices are closed during regular business hours, the report shall be due on the following business day.

(2) Each January, a detailed annual inventory of facility merchandise, submitted with the monthly operating report required in subsection (j)(1) above. Unless it is a first inventory for a manager at a facility, the inventory must be reconciled with the facility inventory of the year before. Opening inventory will usually be the same as the closing inventory of the year before. Any difference must be explained in an attachment to the inventory.

(k) A licensed manager must establish procedures to:

(1) maintain inventory control;

(2) maintain adequate inventory; and

(3) ensure correct charges by the suppliers of articles sold at the BEP facility.

(l) Because one (1) purpose of the business enterprise program is to demonstrate the competence of blind persons, a licensed manager must maintain a physical presence and personal involvement in the daily management and operation of the BEP facility.

(m) A licensed manager shall employ other persons as necessary for the following purposes:

(1) The effective and efficient operation of the BEP facility.

(2) Compliance with all contractual obligations.

(3) Maintaining continuous operation of the facility.

(n) A licensed manager must assure that the terms of employment of any employee are commensurate with the terms of employment of other persons engaged in similar work in the local economy.

(o) A licensed manager is responsible for the conduct of the manager's employees and must ensure that any employee is aware of and complies with the business practices set out in this rule. The manager is responsible for correcting actions of an employee and enforcing the business practices that apply to an employee.

(p) If a licensed manager becomes or is unable to personally operate the BEP facility and to perform under provisions of the

agreement between the manager and the state licensing agency, the manager must:

- (1) notify the state licensing agency promptly; and
- (2) select an individual, approved in advance by the state licensing agency, and make arrangements for that individual, to operate the facility in the operator's absence.

If a manager fails or is unable to comply with this subsection, the state licensing agency shall have the right to place a temporary operator in the BEP facility and to assess the costs of the temporary operator to the manager.

(q) A licensed manager shall:

- (1) obtain each policy of insurance required, in the amount required, pursuant to the operating agreement with the state licensing agency;
- (2) upon approval of the state licensing agency, obtain any additional policies of insurance considered necessary for the BEP facility;
- (3) ensure that each policy of insurance names DDARS as an additional insured;
- (4) provide the state licensing agency with a copy of each policy of insurance, if requested; and
- (5) immediately notify the state licensing agency if either an insurer or the licensed manager cancels any required insurance.

(r) A licensed manager must ensure that each BEP facility will be open during the days and hours:

(1) specified in:

- (A) the permit issued to the state licensing agency for the BEP facility; or
- (B) the agreement between the state licensing agency and the custodial authority of the BEP facility; or

(2) otherwise agreed upon by the state licensing agency, the manager, and the custodial authority of the BEP facility.

(s) Articles sold at a BEP facility may consist of newspapers, periodicals, publications, confections, tobacco products, foods, beverages, and any other articles or services suitable for a particular location as determined by the state licensing agency, in consultation with the custodial authority and the licensed manager. However, the state licensing agency, in consultation with the custodial authority and the licensed manager, may exclude the sale of various types of merchandise or products at a particular site.

(t) A licensed manager has the right to make the ultimate decision as to particular brands of articles sold.

(u) A licensed manager shall select suppliers of merchandise to be sold at the assigned BEP facility.

(v) A licensed manager has full responsibility for all financial arrangements necessary to obtain merchandise for the BEP facility, except for the initial stock.

(w) A licensed manager must pay all bills, including purchases for goods or services, in a timely manner.

(x) The possession, consumption, or use of alcoholic beverages or illegal drugs at a BEP facility by a licensed manager or by an employee of the manager is not permitted. A licensed manager or an employee of a manager shall not work under the influence of alcohol or illegal drugs at a BEP facility. No alcoholic beverages or illegal drugs shall be allowed at a BEP facility.

(y) A licensed manager must maintain fresh stock and must not sell out-of-date product.

(z) A licensed manager must assure that services are provided to customers and the public in a courteous and professional manner at all times. Any contact with the custodial authority or management of the BEP facility must be conducted in a professional and courteous manner. (*Division of Disability, Aging, and Rehabilitative Services; 460 IAC 2-4-36; filed Aug 23, 2001, 2:30 p.m.: 25 IR 79*)

460 IAC 2-4-37 Business performance of a business enterprise program facility

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

Affected: IC 12-12-5; 20 U.S.C. 107

Sec. 37. (a) A BEP facility must produce a reasonable amount of net proceeds in order to:

- (1) provide a significant economic opportunity for a licensed manager or manager trainee;
- (2) provide for a productive use of program assets; and
- (3) be suitable as a BEP facility.

(b) The state licensing agency, with the active participation of the Indiana committee of licensed managers, shall select criteria to determine whether a BEP facility produces a reasonable amount of net proceeds. The criteria includes, but is not limited to, the following:

- (1) The criteria set out in section 14(a)(2) of this rule.
- (2) An operator's need for assistance in performing any operational responsibility under this rule.

(c) The state licensing agency will perform periodic evaluations of each BEP facility to determine whether a facility is producing a reasonable amount of net proceeds. (*Division of Disability, Aging, and Rehabilitative Services; 460 IAC 2-4-37; filed Aug 23, 2001, 2:30 p.m.: 25 IR 81*)

460 IAC 2-4-38 Indiana committee of licensed managers

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

Affected: IC 12-12-5; 20 U.S.C. 107

Sec. 38. (a) The Indiana committee of licensed managers shall be fully representative, to the extent possible, of all licensed managers in the Indiana program on the basis of geography, facility type, and designation as a federal or nonfederal facility. The committee shall consist of a total of nine (9) members selected from the following categories in the number or numbers indicated:

- (1) By geographic location of a licensed manager's primary facility located:
 - (A) north of I-70 and west of US 31, one (1) committee member;
 - (B) north of I-70 and east of US 31, one (1) committee member; and
 - (C) south of I-70, one (1) committee member.
- (2) By facility type of a licensed manager's primary facility:
 - (A) highway vending, one (1) committee member;
 - (B) non-highway vending, one (1) committee member;
 - (C) snack bar, cafeteria, and other type of facility, one (1) committee member.
- (3) By designation of a licensed manager's primary facility as a federal or nonfederal facility:
 - (A) federal facility, one (1) committee member; and
 - (B) nonfederal facility, two (2) committee members.

(b) Requirements for the election of committee members are as follows:

- (1) All members of the committee shall be elected every two (2) years at a conference sponsored by the state licensing agency.
- (2) Only licensed managers may nominate, vote for, and elect members to the committee.
- (3) A licensed manager may vote for and elect only committee members to serve in the same three (3) categories as the licensed manager's primary facility. For example, if the primary facility of a licensed manager is located south of I-70, is a snack bar, and is a nonfederal facility, the licensed manager may vote for and elect committee members only in those three (3) categories.
- (4) The participation of a licensed manager in the election of committee members shall not be conditioned upon the payment of dues or any fees.

(c) The state licensing agency shall notify all licensed managers, in writing, at least thirty (30) days before the election of the committee at a biennial conference. The notice must include the following information:

- (1) The date, time, and place of the election of members of the Indiana committee of licensed managers.
- (2) The three (3) categories in which a licensed manager may vote as determined from a primary facilities list enclosed in the notice.
- (3) The process whereby the manager may contact the state licensing agency within ten (10) days of receipt of the notice if the manager believes that the primary facilities list contains an error concerning the manager's primary facility or the categories in which the manager may vote.
- (4) Notice that a licensed manager may submit written nominations prior to the conference for any position on the committee, and the process for doing so.
- (5) Notice that nominations for all positions on the committee will also be taken from the floor at the election.

(d) Official committee action requirements are as follows:

- (1) A quorum of the committee shall consist of five (5) members.
- (2) Motions shall be passed by a majority of those members present.

(e) The duties of the committee are as follows:

- (1) To actively participate with the state licensing agency in major administrative decisions and policy and program development decisions affecting the business enterprise program.
- (2) To receive and transmit grievances of licensed managers to the state licensing agency, and to serve as advocate for licensed managers in connection with the grievances.

(3) To actively participate with the state licensing agency in decisions regarding the transfer and promotion of licensed managers.

(4) To actively participate with the state licensing agency in the development of training and retraining programs for licensed managers.

(5) To sponsor meetings and instructional conferences for licensed managers with the state licensing agency.

(6) To keep confidential any confidential information concerning program participants that is disclosed to committee members during the exercise of their duties under this section.

(f) The payment of any expenses incurred by the committee in conjunction with the duties of the committee shall be subject to the prior approval of the state licensing agency. Committee members will be reimbursed in accordance with state travel and administrative policies. (*Division of Disability, Aging, and Rehabilitative Services; 460 IAC 2-4-38; filed Aug 23, 2001, 2:30 p.m.: 25 IR 81; errata filed Jan 10, 2002, 11:37 a.m.: 25 IR 1645*)

460 IAC 2-4-39 Accessibility of written materials

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

Affected: IC 12-12-5; 20 U.S.C. 107

Sec. 39. (a) A licensed manager and a manager trainee may designate a preferred format for receiving access to written materials or communications from the agency. Available formats are as follows:

(1) Braille.

(2) Large print.

(3) Computer disk.

(4) Recorded tape.

(b) If reasonably possible, the state licensing agency shall provide a licensed manager and a manager trainee with access to written materials or communications in the preferred format requested under subsection (a). (*Division of Disability, Aging, and Rehabilitative Services; 460 IAC 2-4-39; filed Aug 23, 2001, 2:30 p.m.: 25 IR 82*)

Rule 5. Interpreter Standards for the Deaf and Hard of Hearing in Educational Settings

460 IAC 2-5-1 Scope

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-12-7-5

Affected: IC 12-12-7

Sec. 1. (a) This rule establishes state certification standards for behavior, competency, and proficiency in interpretation, transliteration, and oral transliteration in a public or private primary or secondary school setting.

(b) This rule applies to a person who:

(1) applies for state certification;

(2) works in a public or private school in grades preschool through secondary school in Indiana with a deaf or hard of hearing student; and

(3) is hired as an interpreter or transliterator.

This includes any interpreter/transliterator who uses American Sign Language or who uses any code or method of communication used by deaf or hard of hearing students, including, but not limited to, cued speech, signed English, signing exact English, seeing essential English, conceptually accurate signed English (CASE), or oral methods of communication.

(c) This rule does not apply to certified teachers with endorsement to teach deaf children unless the person is hired by a public or private school to work as an interpreter/transliterator. (*Division of Disability, Aging, and Rehabilitative Services; 460 IAC 2-5-1; filed Jun 27, 2002, 1:40 p.m.: 25 IR 3765*)

460 IAC 2-5-2 Definitions

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-12-7-5

Affected: IC 12-12-7

Sec. 2. (a) The definitions and acronyms in this section apply throughout this rule.

(b) "ASL" means American Sign Language.

(c) "BIS" means board of interpreter standards.

(d) "CEU" means continuing education unit.

(e) "Code of ethics" means the rules of professional behavior for interpreters and transliterators approved by the board of interpreter standards.

(f) "Cued Speech" means a system for visual representation of spoken language using eight (8) handshapes and four (4) hand locations near the face to supplement speech.

(g) "DDARS" means the division of disability, aging, and rehabilitative services.

(h) "Deaf or hard of hearing person" means the persons for and between whom the interpreter is facilitating communication and includes both hearing and deaf consumers.

(i) "DHHS" means deaf and hard of hearing services.

(j) "EIPA" means educational interpreter performance assessment.

(k) "Educational interpreter" means a person who is able to perform conventional interpreting or transliterating, together with required skills for working in the educational setting.

(l) "Hard of hearing" means a person who has mild to moderate hearing loss.

(m) "Hearing impaired" means an educational label that is used to refer to all deaf and hard of hearing students.

(n) "Individualized education program (IEP)" means a document developed by a case conference committee which identifies educational goals and objectives needed to appropriately address the educational needs of a student with a disability.

(o) "Interpreter" means interpreters, transliterators, and oral transliterators and includes a person who works with a deaf or hard of hearing child or otherwise hearing impaired student to facilitate communication by rendering the complete message for the student and others because they do not share the same language and culture.

(p) "Interpreting" means the process of conveying a message from one (1) language into another.

(q) "Manually coded English" means a signed message that attempts to convey the meaning of the English speaker while maintaining the English form and word order.

(r) "NAD" means National Association of the Deaf.

(s) "New interpreter" means an interpreter who has no proof of work as an interpreter in a school setting.

(t) "Oral transliteration" means the process of understanding the speech and/or mouth movements of deaf, hard of hearing, or otherwise hearing impaired persons and repeating the message in spoken English and includes the process of paraphrasing/transliterating a message spoken in English to a more visible form with natural lip movements so a deaf or hard of hearing person can read the lips of the oral transliterator.

(u) "RID" means Registry of Interpreters for the Deaf.

(v) "SEE II" means Signing Exact English II.

(w) "Setting" means the context within which an interpreting assignment takes place.

(x) "Signed English" means a system devised as a semantic representation of English where ASL signs are used in English word order with fourteen (14) sign makers being added to represent a portion of the inflectional system of English.

(y) "State certification" means certified by DHHS.

(z) "TECUnit" means Testing, Evaluation and Certification Unit, Inc., an organization that certifies Cued Speech transliterators.

(aa) "Transliteration" refers to the process of conveying information from a spoken English message to an invented code that is signed or vice versa. (*Division of Disability, Aging, and Rehabilitative Services; 460 IAC 2-5-2; filed Jun 27, 2002, 1:40 p.m.: 25 IR 3765*)

460 IAC 2-5-3 Registration requirements

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-12-7-5

Affected: IC 12-12-7

Sec. 3. In order to receive state certification as an interpreter, working interpreters/translitterators in Indiana must be registered with deaf and hard of hearing services (DHHS) in the manner prescribed by DHHS. DHHS is the agency responsible for standards related to sign language interpreters in Indiana and has been designated as the agency to make the determination that an interpreter

can be certified to interpret in an educational setting. (*Division of Disability, Aging, and Rehabilitative Services; 460 IAC 2-5-3; filed Jun 27, 2002, 1:40 p.m.: 25 IR 3766*)

460 IAC 2-5-4 Certificate

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-12-7-5
Affected: IC 12-12-7

Sec. 4. After being certified by the state, an interpreter shall be issued a certificate signed by the DHHS deputy director and DDARS director evidencing such certification. An interpreter shall also be issued an identification card signed by the DHHS deputy director and DDARS director, a copy of which the interpreter shall present when requested as proof of certification. (*Division of Disability, Aging, and Rehabilitative Services; 460 IAC 2-5-4; filed Jun 27, 2002, 1:40 p.m.: 25 IR 3766*)

460 IAC 2-5-5 Certification requirements for new interpreters and transliterators

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-12-7-5
Affected: IC 12-12-7

Sec. 5. (a) In addition to any other requirements that a school district or school corporation establishes, to receive state certification as an interpreter, a person who interprets/transliterates in a public or private school in Indiana working with a deaf or hard of hearing student is required to have the appropriate national certification or performance assessment score listed in subsection (b). This section applies to all new interpreters and transliterators after July 1, 2010.

(b) The five (5) types of certificates and corresponding requirements include:

- | | |
|--------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| (1) American Sign Language: | Hold the RID certificate of interpretation (CI) or the NAD Level IV or V for educational situations requiring an ASL/English interpreter. |
| (2) Manually coded English (MCE):
(unspecified MCE) | Hold the RID certificate of transliteration (CT) for educational situations requiring transliteration. |
| (3) Oral transliteration: | Hold the RID oral transliteration certificate (OTC) for educational situations requiring an oral transliterator. This certificate requires a special written and performance exam. |
| (4) Cued speech: | Hold certification from TECUnit and pass the RID written generalist test for educational situations requiring a cued speech transliterator. |
| (5) Signing exact English (SEE-II): | Pass the educational interpreter performance assessment (EIPA) instrument specific to SEE-II at level 3.5 and pass the RID written generalist test. These are the requirements for educational situations needing a SEE-II transliterator. |

(c) Interpreters or transliterators holding applicable national certifications must maintain these certifications in good standing in order to maintain their certification by the state, including fulfilling continuing education requirements.

(d) An interpreter or transliterator certified by the state shall renew the certification every two (2) years in the manner prescribed by DHHS. (*Division of Disability, Aging, and Rehabilitative Services; 460 IAC 2-5-5; filed Jun 27, 2002, 1:40 p.m.: 25 IR 3767*)

460 IAC 2-5-6 Certificate requirements for practicing interpreters and transliterators

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-12-7-5
Affected: IC 12-12-7

Sec. 6. (a) To receive state certification as an interpreter or transliterator, an individual who has documentation proving paid work as an educational interpreter prior to July 1, 2010, shall meet the following criteria:

- (1) Beginning July 1, 2002, the interpreter or transliterator must earn annually one (1) CEU of skill development in the type of interpreting or transliterating that corresponds to the certificate held by the interpreter.
- (2) Beginning July 1, 2002, the interpreter or transliterator must earn annually one (1) CEU from one (1) of the following seven (7) content areas:

- (A) Deaf culture and history.
- (B) Language development and acquisition in children.
- (C) Child development.
- (D) Foundations in interpreting theory and practice.
- (E) Code of ethics for educational interpreters.
- (F) Principles and practices of special education; or
- (G) Audiological issues for students and adults.

(b) An interpreter or transliterator certified by the state shall renew such certification every two (2) years in the manner prescribed by DHHS.

(c) After July 1, 2010, a newly hired interpreter or transliterator cannot use this section in later years to qualify. (*Division of Disability, Aging, and Rehabilitative Services; 460 IAC 2-5-6; filed Jun 27, 2002, 1:40 p.m.: 25 IR 3767*)

460 IAC 2-5-7 Limited state certification requirements for graduates of interpreter training programs

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-12-7-5

Affected: IC 12-12-7

Sec. 7. (a) To receive limited state certification as an interpreter or transliterator, an individual who has a degree in Sign Language Interpreting from an accredited institution after July 1, 2010, may meet each of the following criteria to hold a limited certificate:

(1) When granted the limited certificate, the interpreter/transliterator must earn annually one (1) CEU of skill development in the type of interpreting/transliterating that corresponds to the limited certificate held by the interpreter/transliterator.

(2) When granted the limited certificate, the interpreter/transliterator must annually earn one (1) CEU from one (1) of the following seven (7) content areas:

- (A) Deaf culture and history.
- (B) Language development and acquisition in children.
- (C) Child development.
- (D) Foundations in interpreting theory and practice.
- (E) Code of ethics for educational interpreters.
- (F) Principles and practices of special education; or
- (G) Audiological issues for students and adults.

(3) The interpreter or transliterator must apply for and pass the RID written generalist test for the limited certificate.

(b) The interpreter or transliterator can renew the limited state certificate each year for up to five (5) years in the manner prescribed by DHHS.

(c) A person may use this section for only the first five (5) years immediately following graduation from an accredited sign language interpreter preparation program. There shall be no renewals or extensions of this section. (*Division of Disability, Aging, and Rehabilitative Services; 460 IAC 2-5-7; filed Jun 27, 2002, 1:40 p.m.: 25 IR 3767*)

460 IAC 2-5-8 Interpreter code of ethics

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-12-7-5

Affected: IC 12-12-7

Sec. 8. (a) To maintain state certification as an interpreter or transliterator, an individual must follow the ethical standards taken from the RID code of ethics.

(1) Interpreters and transliterators shall keep all assignment-related information strictly confidential.

(2) Interpreters and transliterators shall render the message faithfully, always conveying the content and spirit of the speaker, using language most readily understood by the person(s) whom they serve.

(3) Interpreters and transliterators shall not counsel, advise, or interject personal opinions.

(4) Interpreters and transliterators shall accept assignments using discretion with regard to skill, setting, and the consumers involved.

(5) Interpreters and transliterators shall request compensation for services in a professional and judicious manner.

(6) Interpreters and transliterators shall function in a manner appropriate to the situation.

(7) Interpreters and transliterators shall strive to further knowledge and skills through participation in workshops, professional meetings, interaction with professional colleagues, and reading of current literature in the field.

(8) Interpreters and transliterators shall strive to maintain high professional standards in compliance with the code of ethics.

(b) Questions by consumers, interpreters, and transliterators relating to interpreting these ethical standards in an educational setting can be answered by contacting DHHS. (*Division of Disability, Aging, and Rehabilitative Services; 460 IAC 2-5-8; filed Jun 27, 2002, 1:40 p.m.: 25 IR 3768*)

460 IAC 2-5-9 Grievances

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-12-7-5

Affected: IC 12-12-7

Sec. 9. The grievance committee created under 460 IAC 2-3-13 shall have jurisdiction over grievances arising out of this rule, and any grievances shall be referred to that committee. All grievance procedures, actions, enforcement, discipline, and appeals shall be handled according to the provisions of 460 IAC 2-3-15 through 460 IAC 2-3-20. (*Division of Disability, Aging, and Rehabilitative Services; 460 IAC 2-5-9; filed Jun 27, 2002, 1:40 p.m.: 25 IR 3768*)

**ARTICLE 3. DIVISION ON MENTAL RETARDATION AND OTHER DEVELOPMENTAL DISABILITIES:
ALTERNATE RESIDENTIAL CARE (EXPIRED)**

(*Expired under IC 4-22-2.5, effective January 1, 2002.*)

**ARTICLE 3.5. RATES FOR ADULT DAY SERVICES PROVIDED BY COMMUNITY MENTAL
RETARDATION AND OTHER DEVELOPMENTAL DISABILITIES CENTERS**

Rule 1. Definitions, Purpose, and Applicability

460 IAC 3.5-1-1 Definitions

Authority: IC 12-8-8-4

Affected: IC 12-7-2-39; IC 12-7-2-61; IC 12-9-2-6

Sec. 1. The following definitions apply throughout this article:

(1) "Adult" means an individual with a developmental disability who is sixteen (16) years of age or older and who no longer is participating in a secondary education program.

(2) "Adult day services" means the following services that providers, under contract with the division, provide to adult individuals with developmental disabilities:

(A) supported employment follow-along;

(B) community-based sheltered work;

(C) sheltered work;

(D) group habilitation;

(E) individual habilitation;

(F) group occupational therapy;

(G) individual occupational therapy;

(H) group physical therapy;

(I) individual physical therapy;

(J) group speech therapy;

(K) individual speech therapy; and

(L) transportation.

(3) "Developmental disability" has the meaning set forth in IC 12-7-2-61.

(4) "Division" means the division of disability, aging, and rehabilitative services.

(5) "Provider" means community mental retardation and other developmental disabilities centers, as defined in IC 12-7-2-39,

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under contract with the division to provide adult day services to individuals with developmental disabilities.

(6) "Round trip" means transportation of an adult from the adult's place of residence to the provider and back.

(7) "Unit of service" means a measurable unit of an adult day service for which a rate of reimbursement is established under this article.

(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 3.5-1-1; filed Mar 18, 1996, 11:00 a.m.: 19 IR 2040; readopted filed Mar 11, 2003, 12:42 p.m.: 26 IR 2694)

460 IAC 3.5-1-2 Purpose and applicability

Authority: IC 12-8-8-4

Affected: IC 12-7-2-39; IC 12-7-2-61; IC 12-9-2-6

Sec. 2. The purpose of this article is to establish unit of service reimbursement rates for providers contracting with the division to provide adult day services to individuals with developmental disabilities. *(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 3.5-1-2; filed Mar 18, 1996, 11:00 a.m.: 19 IR 2041; readopted filed Mar 11, 2003, 12:42 p.m.: 26 IR 2694)*

Rule 2. Unit of Service Reimbursement Rates

460 IAC 3.5-2-1 Unit of service reimbursement rates

Authority: IC 12-8-8-4

Affected: IC 12-7-2-39; IC 12-7-2-61; IC 12-9-2-6

Sec. 1. (a) The units of adult day services specified in this section shall be reimbursed by the division at the following corresponding rates:

Adult Day Service	Unit of Service	Unit Rate
Supported employment follow-along	1 hour	\$36.95
Community-based sheltered work	1 hour	\$5.67
Sheltered work	1 hour	\$2.75
Group habilitation	1 hour	\$5.34
Individual habilitation	1 hour	\$28.82
Group occupational therapy	15 minutes	\$5.04
Individual occupational therapy	15 minutes	\$20.13
Group physical therapy	15 minutes	\$5.87
Individual physical therapy	15 minutes	\$23.49
Group speech therapy	15 minutes	\$4.24
Individual speech therapy	15 minutes	\$16.97
Transportation	1 round trip	\$8.91

(b) For the following rates, at least eighty percent (80%) of the unit rate increase from the previously published unit rate must be paid by the provider to the hourly wages of direct care staff:

Adult Day Service	Unit of Service	Rate	Previous Unit Rate	New Unit Rate
Community-based sheltered work	1 hour		\$5.43	\$5.67
Group habilitation	1 hour		\$5.11	\$5.34
Individual habilitation	1 hour		\$27.58	\$28.82

(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 3.5-2-1; filed Mar 18, 1996, 11:00 a.m.: 19 IR 2041; filed Feb 11, 2002, 4:27 p.m.: 25 IR 2226; readopted filed Mar 11, 2003, 12:42 p.m.: 26 IR 2694)

460 IAC 3.5-2-2 Annual review of adult day service reimbursement rates

Authority: IC 12-8-8-4

Affected: IC 12-7-2-39; IC 12-7-2-61; IC 12-9-2-6

Sec. 2. The division shall annually review the adult day service reimbursement rates established by this article. (*Division of Disability, Aging, and Rehabilitative Services; 460 IAC 3.5-2-2; filed Mar 18, 1996, 11:00 a.m.: 19 IR 2041; readopted filed Mar 11, 2003, 12:42 p.m.: 26 IR 2694*)

ARTICLE 4. STATE INSTITUTIONS (EXPIRED)

(*Expired under IC 4-22-2.5, effective January 1, 2002.*)

ARTICLE 5. PUBLIC ASSISTANCE

NOTE: 460 IAC 5 was transferred from 470 IAC 8.1-3. Wherever in any promulgated text there appears a reference to 470 IAC 8.1-3, substitute 460 IAC 5-1.

Rule 1. Room and Board Assistance Program

460 IAC 5-1-1 Definitions (Expired)

Sec. 1. (*Expired under IC 4-22-2.5, effective January 1, 2002.*)

460 IAC 5-1-2 Interview of applicants and recipients (Expired)

Sec. 2. (*Expired under IC 4-22-2.5, effective January 1, 2002.*)

460 IAC 5-1-3 Place of application (Expired)

Sec. 3. (*Expired under IC 4-22-2.5, effective January 1, 2002.*)

460 IAC 5-1-4 Age requirement (Expired)

Sec. 4. (*Expired under IC 4-22-2.5, effective January 1, 2002.*)

460 IAC 5-1-5 Visual eligibility (Expired)

Sec. 5. (*Expired under IC 4-22-2.5, effective January 1, 2002.*)

460 IAC 5-1-6 Disability determination (Expired)

Sec. 6. (*Expired under IC 4-22-2.5, effective January 1, 2002.*)

460 IAC 5-1-7 United States citizenship or alienage requirement (Expired)

Sec. 7. (*Expired under IC 4-22-2.5, effective January 1, 2002.*)

460 IAC 5-1-8 Personal property ownership; limitations (Expired)

Sec. 8. (*Expired under IC 4-22-2.5, effective January 1, 2002.*)

460 IAC 5-1-9 Real property ownership; limitations (Expired)

Sec. 9. (*Expired under IC 4-22-2.5, effective January 1, 2002.*)

460 IAC 5-1-10 Life care contracts (Expired)

Sec. 10. (Expired under IC 4-22-2.5, effective January 1, 2002.)

460 IAC 5-1-11 Income of applicant or recipient; calculation (Expired)

Sec. 11. (Expired under IC 4-22-2.5, effective January 1, 2002.)

460 IAC 5-1-12 Income of spouse; inclusion (Expired)

Sec. 12. (Expired under IC 4-22-2.5, effective January 1, 2002.)

460 IAC 5-1-13 Income eligibility

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

Affected: IC 12-10-6

Sec. 13. (a) An applicant's or recipient's income eligibility for room and board assistance shall be determined by the procedures in this section.

(b) The following requirements apply to a single applicant or recipient:

(1) Determine the applicant's or recipient's countable income under section 11 of this rule.

(2) Subtract from the total amount determined in subdivision (1), fifty dollars (\$50) for the personal needs of the applicant or recipient.

(3) Subtract the established room and board rate from the amount determined in subdivision (2).

(4) If the remainder is less than zero dollars (\$0), the applicant or recipient is eligible for room and board assistance.

(5) If the remainder is zero dollars (\$0) or more, the applicant or recipient is ineligible for room and board assistance.

(c) The following requirements apply to married applicants or recipients residing in the room and board facility:

(1) Determine separately each spouse's countable income under section 11 of this rule.

(2) Subtract from each spouse's total amount determined in subdivision (1), fifty dollars (\$50) for the spouse's personal needs.

(3) Subtract the established room and board rate from the amount determined in subdivision (2) for each spouse.

(4) If each spouse's remainder is less than zero dollars (\$0), each spouse is eligible for room and board assistance.

(5) If one (1) spouse is ineligible, subtract the amount of his average monthly medical expenses from his remainder determined in subdivision (3).

(6) Add the remainder determined in subdivision (5) to the eligible spouse's countable income [sic.] subdivision (1).

(7) Subtract from the total amount determined in subdivision (6), fifty dollars (\$50) for personal needs.

(8) Subtract the established room and board rate from the amount determined in subdivision (7).

(9) If the remainder is less than zero dollars (\$0), the spouse is eligible for room and board assistance.

(10) If the remainder is zero dollars (\$0) or more, both spouses are ineligible for room and board assistance.

(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 5-1-13; filed Mar 1, 1984, 2:31 p.m.: 7 IR 1007, eff Apr 1, 1984; filed Sep 22, 1988, 2:30 p.m.: 12 IR 294; filed Feb 23, 1998, 11:30 a.m.: 21 IR 2385; filed Mar 13, 2000, 7:50 a.m.: 23 IR 1992) NOTE: Transferred from the Division of Family and Children (470 IAC 8.1-3-13) to the Division of Aging and Rehabilitative Services (460 IAC 5-1-13) by P.L.9-1991, SECTION 130, effective January 1, 1992.

460 IAC 5-1-14 Rate of payment (Repealed)

Sec. 14. (Repealed by Division of Aging and Rehabilitative Services; filed Jun 3, 1992, 9:00 a.m.: 15 IR 2211)

460 IAC 5-1-15 Payment of room and board assistance (Expired)

Sec. 15. (Expired under IC 4-22-2.5, effective January 1, 2002.)

460 IAC 5-1-16 Replacement of lost or stolen warrants (Expired)

Sec. 16. (Expired under IC 4-22-2.5, effective January 1, 2002.)

460 IAC 5-1-17 Accounting for personal needs funds (Expired)

Sec. 17. (Expired under IC 4-22-2.5, effective January 1, 2002.)

ARTICLE 6. SUPPORTED LIVING SERVICES AND SUPPORTS

Rule 1. Purpose

460 IAC 6-1-1 Purpose

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-11-1.1-9; IC 12-11-2.1-12

Affected: IC 12-11-1.1; IC 12-11-2.1

Sec. 1. The purpose of this article is to establish standards and requirements for the approval and monitoring of providers of supported living services and supports to individuals with a developmental disability. (*Division of Disability, Aging, and Rehabilitative Services; 460 IAC 6-1-1; filed Nov 4, 2002, 12:04 p.m.: 26 IR 749*)

Rule 2. Applicability

460 IAC 6-2-1 Providers of services

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-11-1.1-9; IC 12-11-2.1-12

Affected: IC 12-11-1.1; IC 12-11-2.1

Sec. 1. This article applies to the approval and monitoring of providers of supported living services or supported living supports. (*Division of Disability, Aging, and Rehabilitative Services; 460 IAC 6-2-1; filed Nov 4, 2002, 12:04 p.m.: 26 IR 749*)

460 IAC 6-2-2 Rules applicable to all providers

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-11-1.1-9; IC 12-11-2.1-12

Affected: IC 12-11-1.1; IC 12-11-2.1

Sec. 2. This rule, 460 IAC 6-3 through 460 IAC 6-17, and 460 IAC 6-34 apply to all providers of supported living services and supports. (*Division of Disability, Aging, and Rehabilitative Services; 460 IAC 6-2-2; filed Nov 4, 2002, 12:04 p.m.: 26 IR 749; filed Apr 16, 2004, 10:00 a.m.: 27 IR 2724*)

460 IAC 6-2-3 Rules applicable to specific providers

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-11-1.1-9; IC 12-11-2.1-12

Affected: IC 12-11-1.1; IC 12-11-2.1

Sec. 3. 460 IAC 6-18 through 460 IAC 6-34 apply to the providers of supported living services and supports specified in the respective rule. (*Division of Disability, Aging, and Rehabilitative Services; 460 IAC 6-2-3; filed Nov 4, 2002, 12:04 p.m.: 26 IR 749; filed Apr 16, 2004, 10:00 a.m.: 27 IR 2724*)

460 IAC 6-2-4 Conflict with Medicaid provisions

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-11-1.1-9; IC 12-11-2.1-12

Affected: IC 12-11-1.1; IC 12-11-2.1

Sec. 4. If any provision of this article is deemed to be in conflict with any federal or state statute, regulation, or rule that is specifically applicable to the Medicaid program, then such other statute, regulation, or rule shall supersede that part of this article in which the conflict is found. (*Division of Disability, Aging, and Rehabilitative Services; 460 IAC 6-2-4; filed Nov 4, 2002, 12:04*)

p.m.: 26 IR 749)

Rule 3. Definitions

460 IAC 6-3-1 Applicability of definitions

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-11-1.1-9; IC 12-11-2.1-12

Affected: IC 12-11-1.1; IC 12-11-2.1

Sec. 1. The definitions in this rule apply throughout this article. *(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 6-3-1; filed Nov 4, 2002, 12:04 p.m.: 26 IR 749)*

460 IAC 6-3-2 “Abuse” defined

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-11-1.1-9; IC 12-11-2.1-12

Affected: IC 12-11-1.1; IC 12-11-2.1

Sec. 2. “Abuse” means the following:

- (1) Intentional or willful infliction of physical injury.
- (2) Unnecessary physical or chemical restraints or isolation.
- (3) Punishment with resulting physical harm or pain.
- (4) Sexual molestation, rape, sexual misconduct, sexual coercion, and sexual exploitation.
- (5) Verbal or demonstrative harm caused by oral or written language, or gestures with disparaging or derogatory implications.
- (6) Psychological, mental, or emotional harm caused by unreasonable confinement, intimidation, humiliation, harassment, threats of punishment, or deprivation.

(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 6-3-2; filed Nov 4, 2002, 12:04 p.m.: 26 IR 749)

460 IAC 6-3-2.1 “Adult foster care services” defined

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-11-1.1-9; IC 12-11-2.1-12

Affected: IC 12-11-1.1; IC 12-11-2.1

Sec. 2.1. “Adult foster care services” means a living arrangement in which an individual lives in the private home of a principal caregiver who is unrelated to the individual. *(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 6-3-2.1; filed Aug 29, 2003, 10:30 a.m.: 27 IR 101)*

460 IAC 6-3-3 “Adult protective services” or “APS” defined

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-11-1.1-9; IC 12-11-2.1-12

Affected: IC 12-10-3; IC 12-11-1.1; IC 12-11-2.1

Sec. 3. “Adult protective services” or “APS” means the program established under IC 12-10-3. *(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 6-3-3; filed Nov 4, 2002, 12:04 p.m.: 26 IR 750)*

460 IAC 6-3-4 “Advocate” defined

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-11-1.1-9; IC 12-11-2.1-12

Affected: IC 12-11-1.1; IC 12-11-2.1

Sec. 4. (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 6-3-4; filed Nov 4, 2002, 12:04 p.m.: 26 IR 750)*

460 IAC 6-3-5 “Applicant” defined

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-11-1.1-9; IC 12-11-2.1-12
Affected: IC 12-11-1.1; IC 12-11-2.1

Sec. 5. “Applicant” means a natural person or entity who applies to the BDDS for approval to provide one (1) or more supported living services or supports. (*Division of Disability, Aging, and Rehabilitative Services; 460 IAC 6-3-5; filed Nov 4, 2002, 12:04 p.m.: 26 IR 750*)

460 IAC 6-3-5.1 “Applied behavior analysis services” defined

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-11-1.1-9; IC 12-11-2.1-12
Affected: IC 12-11-1.1; IC 12-11-2.1

Sec. 5.1. “Applied behavior analysis services” means therapy services that are highly intensive, individualized instruction and behavior intervention to assist an individual in developing skills with social value. Applied behavior analysis therapy is provided:

- (1) over a two (2) to three (3) year time period; and
- (2) to individuals between two (2) years of age and seven (7) years of age.

(*Division of Disability, Aging, and Rehabilitative Services; 460 IAC 6-3-5.1; filed Aug 29, 2003, 10:30 a.m.: 27 IR 101*)

460 IAC 6-3-5.2 “Applied behavior analysis support plan” defined

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-11-1.1-9; IC 12-11-2.1-12
Affected: IC 12-11-1.1; IC 12-11-2.1

Sec. 5.2. “Applied behavior analysis support plan” means a plan that addresses the applied behavior analysis support needs of an individual. (*Division of Disability, Aging, and Rehabilitative Services; 460 IAC 6-3-5.2; filed Aug 29, 2003, 10:30 a.m.: 27 IR 101*)

460 IAC 6-3-6 “BDDS” defined

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-11-1.1-9; IC 12-11-2.1-12
Affected: IC 12-11-1.1-1; IC 12-11-2.1

Sec. 6. “BDDS” means bureau of developmental disabilities services as created under IC 12-11-1.1-1. (*Division of Disability, Aging, and Rehabilitative Services; 460 IAC 6-3-6; filed Nov 4, 2002, 12:04 p.m.: 26 IR 750*)

460 IAC 6-3-6.1 “BDDS behavior management committee” defined

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-11-1.1-9; IC 12-11-2.1-12
Affected: IC 12-11-1.1; IC 12-11-2.1; IC 25-33-1.5.1

Sec. 6.1. “BDDS behavior management committee” means a group of persons appointed by the director to review the applications of individuals seeking to be approved to provide behavior management services as a Level 2 clinician pursuant to 460 IAC 6-5-4(c)(1)(E). The committee shall consist of:

- (1) at least two (2) division employees; and
- (2) a licensed psychologist under IC 25-33 who has an endorsement as a health service provider in psychology pursuant to IC 25-33-1-5.1(c) and is not an employee of the division.

(*Division of Disability, Aging, and Rehabilitative Services; 460 IAC 6-3-6.1; filed Aug 29, 2003, 10:30 a.m.: 27 IR 101*)

460 IAC 6-3-7 “Behavioral support plan” defined

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-11-1.1-9; IC 12-11-2.1-12
Affected: IC 12-11-1.1; IC 12-11-2.1

Sec. 7. “Behavioral support plan” means a plan that addresses the behavioral support needs of an individual. (*Division of*

Disability, Aging, and Rehabilitative Services; 460 IAC 6-3-7; filed Nov 4, 2002, 12:04 p.m.: 26 IR 750)

460 IAC 6-3-8 “Behavioral support services” defined

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-11-1.1-9; IC 12-11-2.1-12

Affected: IC 12-11-1.1; IC 12-11-2.1

Sec. 8. “Behavioral support services” means training, supervision, or assistance in appropriate expression of emotions and desires, compliance, assertiveness, acquisition of socially appropriate behaviors, and the reduction of inappropriate behaviors. *(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 6-3-8; filed Nov 4, 2002, 12:04 p.m.: 26 IR 750)*

460 IAC 6-3-9 “Case management services” defined

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-11-1.1-9; IC 12-11-2.1-12

Affected: IC 12-11-1.1; IC 12-11-2.1

Sec. 9. “Case management services” means services that enable an individual to receive a full range of appropriate services in a planned, coordinated, efficient, and effective manner. *(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 6-3-9; filed Nov 4, 2002, 12:04 p.m.: 26 IR 750)*

460 IAC 6-3-10 “Child protection services” defined

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-11-1.1-9; IC 12-11-2.1-12

Affected: IC 12-11-1.1; IC 12-11-2.1; IC 31-33

Sec. 10. “Child protection services” refers to child protection services established under IC 31-33. *(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 6-3-10; filed Nov 4, 2002, 12:04 p.m.: 26 IR 750)*

460 IAC 6-3-10.1 “Children’s foster care services” defined

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-11-1.1-9; IC 12-11-2.1-12

Affected: IC 12-11-1.1; IC 12-11-2.1

Sec. 10.1. “Children’s foster care services” means a living arrangement in which an individual under eighteen (18) years of age lives in the private home of a principal caregiver who:

- (1) is unrelated to the individual; and
- (2) has no legal responsibility to support the individual.

(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 6-3-10.1; filed Aug 29, 2003, 10:30 a.m.: 27 IR 101)

460 IAC 6-3-11 “Community-based sheltered employment services” defined

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-11-1.1-9; IC 12-11-2.1-12

Affected: IC 12-11-1.1; IC 12-11-2.1

Sec. 11. “Community-based sheltered employment services” means an agency-operated, work-oriented service consisting of ongoing supervision of an individual while the individual is working. *(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 6-3-11; filed Nov 4, 2002, 12:04 p.m.: 26 IR 750)*

460 IAC 6-3-12 “Community education and therapeutic activities services” defined

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-11-1.1-9; IC 12-11-2.1-12

Affected: IC 12-11-1.1; IC 12-11-2.1

Sec. 12. “Community education and therapeutic activities services” means services in the community, such as the following:

- (1) Vocational classes.
- (2) Therapeutic horseback riding.

(3) Camps.

(4) Other public events for which there is a separate charge.

(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 6-3-12; filed Nov 4, 2002, 12:04 p.m.: 26 IR 750)

460 IAC 6-3-13 “Community habilitation and participation services” defined

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-11-1.1-9; IC 12-11-2.1-12

Affected: IC 12-11-1.1; IC 12-11-2.1

Sec. 13. “Community habilitation and participation services” means services outside of an individual’s home that support learning and assistance in any of the following areas:

(1) Self-care.

(2) Sensory-motor development.

(3) Socialization.

(4) Daily living skills.

(5) Communication.

(6) Community living.

(7) Social skills.

(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 6-3-13; filed Nov 4, 2002, 12:04 p.m.: 26 IR 751)

460 IAC 6-3-14 “Community mental health center” defined

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-11-1.1-9; IC 12-11-2.1-12

Affected: IC 12-7-2-38; IC 12-11-1.1; IC 12-11-2.1

Sec. 14. “Community mental health center” has the meaning set forth in IC 12-7-2-38. *(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 6-3-14; filed Nov 4, 2002, 12:04 p.m.: 26 IR 751)*

460 IAC 6-3-15 “Community mental retardation and other developmental disabilities centers” defined

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-11-1.1-9; IC 12-11-2.1-12

Affected: IC 12-7-2-39; IC 12-11-1.1; IC 12-11-2.1

Sec. 15. “Community mental retardation and other developmental disabilities centers” has the meaning set forth in IC 12-7-2-39. *(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 6-3-15; filed Nov 4, 2002, 12:04 p.m.: 26 IR 751)*

460 IAC 6-3-15.1 “Community transition supports” defined

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-11-1.1-9; IC 12-11-2.1-12

Affected: IC 12-11-1.1; IC 12-11-2.1

Sec. 15.1. “Community transition supports” means supports that are one-time set-up expenses for an individual who is transitioning from an institution to supported living setting in the community. *(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 6-3-15.1; filed Aug 29, 2003, 10:30 a.m.: 27 IR 101)*

460 IAC 6-3-15.2 “Conflict of interest” defined

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-11-1.1-9; IC 12-11-2.1-12

Affected: IC 12-11-1.1; IC 12-11-2.1

Sec. 15.2. “Conflict of interest” means a situation in which an agent, employee, or officer of a provider, or a family member of any of these individuals has a private financial interest, such as affiliation through employment or contract, with an organization that does business with the provider. *(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 6-3-15.2; filed Apr 16, 2004, 10:00 a.m.: 27 IR 2724)*

460 IAC 6-3-15.3 “Cost comparison budget” or “CCB” defined

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-11-1.1-9; IC 12-11-2.1-12

Affected: IC 12-11-1.1; IC 12-11-2.1

Sec. 15.3. “Cost comparison budget” or “CCB” means the format used by the BDDS to:

(1) uniformly account for all services to be provided as specified in the service planner and home and community based services worksheet; and

(2) approve the allocation of funding for specified services for the individual.

(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 6-3-15.3; filed Aug 29, 2003, 10:30 a.m.: 27 IR 101)

460 IAC 6-3-16 “Crisis assistance services” defined

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-11-1.1-9; IC 12-11-2.1-12

Affected: IC 12-11-1.1; IC 12-11-2.1

Sec. 16. “Crisis assistance services” means services designed to provide immediate access to short term, intensive services that are needed due to a behavioral or psychiatric emergency. *(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 6-3-16; filed Nov 4, 2002, 12:04 p.m.: 26 IR 751)*

460 IAC 6-3-17 “Developmental disabilities waiver ombudsman” defined

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-11-1.1-9; IC 12-11-2.1-12

Affected: IC 12-11-1.1; IC 12-11-2.1; IC 12-11-13

Sec. 17. “Developmental disabilities waiver ombudsman” means the statewide waiver ombudsman described in IC 12-11-13. *(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 6-3-17; filed Nov 4, 2002, 12:04 p.m.: 26 IR 751)*

460 IAC 6-3-18 “Direct care staff” defined

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-11-1.1-9; IC 12-11-2.1-12

Affected: IC 12-11-1.1; IC 12-11-2.1

Sec. 18. “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:

- (1) Adult day services.
- (2) Adult foster care services.
- (3) Community-based sheltered employment services.
- (4) Community education and therapeutic activities services.
- (5) Community habilitation and participation services.
- (6) Facility-based sheltered employment services.
- (7) Prevocational services.
- (8) Residential habilitation and support services.
- (9) Respite care services.
- (10) Supported employment services.
- (11) Transportation services.
- (12) Children’s foster care services.
- (13) Independence assistance services.

(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 6-3-18; filed Nov 4, 2002, 12:04 p.m.: 26 IR 751; filed Aug 29, 2003, 10:30 a.m.: 27 IR 102)

460 IAC 6-3-19 “Division” defined

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-11-1.1-9; IC 12-11-2.1-12

Affected: IC 12-9-1-1; IC 12-11-1.1; IC 12-11-2.1

Sec. 19. (a) Except for purposes of 460 IAC 6-5-12, “division” means the division of disability, aging, and rehabilitative services created under IC 12-9-1-1.

(b) For purposes of 460 IAC 6-5-12, “division” means the wage and hour division of the United States Department of Labor. (*Division of Disability, Aging, and Rehabilitative Services; 460 IAC 6-3-19; filed Nov 4, 2002, 12:04 p.m.: 26 IR 751*)

460 IAC 6-3-20 “Elopement” defined

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-11-1.1-9; IC 12-11-2.1-12

Affected: IC 12-11-1.1; IC 12-11-2.1

Sec. 20. “Elopement” means that an individual leaves, without the authorization or consent of the appropriate provider, the level of supervision identified as appropriate for the individual in the individual’s ISP. (*Division of Disability, Aging, and Rehabilitative Services; 460 IAC 6-3-20; filed Nov 4, 2002, 12:04 p.m.: 26 IR 751*)

460 IAC 6-3-21 “Enhanced dental services” defined

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-11-1.1-9; IC 12-11-2.1-12

Affected: IC 12-11-1.1; IC 12-11-2.1

Sec. 21. “Enhanced dental services” means services provided to an individual with dental problems, which, if left untreated, would require the individual to be institutionalized. (*Division of Disability, Aging, and Rehabilitative Services; 460 IAC 6-3-21; filed Nov 4, 2002, 12:04 p.m.: 26 IR 751*)

460 IAC 6-3-22 “Entity” defined

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-11-1.1-9; IC 12-11-2.1-12

Affected: IC 12-11-1.1; IC 12-11-2.1

Sec. 22. “Entity” means any of the following:

- (1) An association.
- (2) A corporation.
- (3) A limited liability company.
- (4) A governmental entity.
- (5) A partnership.

(*Division of Disability, Aging, and Rehabilitative Services; 460 IAC 6-3-22; filed Nov 4, 2002, 12:04 p.m.: 26 IR 752*)

460 IAC 6-3-23 “Environmental modification supports” defined

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-11-1.1-9; IC 12-11-2.1-12

Affected: IC 12-11-1.1; IC 12-11-2.1

Sec. 23. “Environmental modification supports” means a physical adaptation to an individual’s home to:

- (1) ensure the health, welfare, and safety of the individual; or
- (2) enable the individual to function with greater independence in the individual’s home;

and without which, the individual would require institutionalization. (*Division of Disability, Aging, and Rehabilitative Services; 460 IAC 6-3-23; filed Nov 4, 2002, 12:04 p.m.: 26 IR 752*)

460 IAC 6-3-24 “Exploitation” defined

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-11-1.1-9; IC 12-11-2.1-12

Affected: IC 12-11-1.1; IC 12-11-2.1; IC 35-46-1-1

Sec. 24. “Exploitation” means:

- (1) unauthorized use of the personal services, the property, or the identity of an individual; or
- (2) any other type of criminal exploitation, including exploitation under IC 35-46-1-1;

for one's own profit or advantage or for the profit or advantage of another. (*Division of Disability, Aging, and Rehabilitative Services; 460 IAC 6-3-24; filed Nov 4, 2002, 12:04 p.m.: 26 IR 752*)

460 IAC 6-3-25 "Facility-based sheltered employment services" defined

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-11-1.1-9; IC 12-11-2.1-12

Affected: IC 12-11-1.1; IC 12-11-2.1

Sec. 25. "Facility-based sheltered employment services" means employment services provided to an individual that implement the individual's training outcomes and in which the individual is provided remuneration or other occupational activity. (*Division of Disability, Aging, and Rehabilitative Services; 460 IAC 6-3-25; filed Nov 4, 2002, 12:04 p.m.: 26 IR 752; filed Aug 29, 2003, 10:30 a.m.: 27 IR 102*)

460 IAC 6-3-26 "Family and caregiver training services" defined

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-11-1.1-9; IC 12-11-2.1-12

Affected: IC 12-11-1.1; IC 12-11-2.1

Sec. 26. "Family and caregiver training services" means:

(1) training and education to instruct a parent, family member, or primary caregiver in the treatment regimens and use of equipment specified in an individual's ISP; and

(2) training to improve the ability of the parent, family member or primary caregiver to provide care to or for the individual.

(*Division of Disability, Aging, and Rehabilitative Services; 460 IAC 6-3-26; filed Nov 4, 2002, 12:04 p.m.: 26 IR 752*)

460 IAC 6-3-27 "Health care coordination services" defined

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-11-1.1-9; IC 12-11-2.1-12

Affected: IC 12-11-1.1; IC 12-11-2.1

Sec. 27. "Health care coordination services" means medical coordination services to manage the health care needs of an individual. (*Division of Disability, Aging, and Rehabilitative Services; 460 IAC 6-3-27; filed Nov 4, 2002, 12:04 p.m.: 26 IR 752*)

460 IAC 6-3-28 "Home health agency" defined

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-11-1.1-9; IC 12-11-2.1-12

Affected: IC 12-11-1.1; IC 12-11-2.1; IC 16-27

Sec. 28. "Home health agency" means an agency licensed under IC 16-27. (*Division of Disability, Aging, and Rehabilitative Services; 460 IAC 6-3-28; filed Nov 4, 2002, 12:04 p.m.: 26 IR 752*)

460 IAC 6-3-29 "Hospital" defined

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-11-1.1-9; IC 12-11-2.1-12

Affected: IC 12-11-1.1; IC 12-11-2.1; IC 16-27-1-2

Sec. 29. "Hospital" means a hospital licensed under IC 16-27-1-2. (*Division of Disability, Aging, and Rehabilitative Services; 460 IAC 6-3-29; filed Nov 4, 2002, 12:04 p.m.: 26 IR 752*)

460 IAC 6-3-29.5 "Independence assistance services" defined

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-11-1.1-9; IC 12-11-2.1-12

Affected: IC 12-11-1.1; IC 12-11-2.1

Sec. 29.5. "Independence assistance services" means services that an individual needs to maintain independence to live successfully in his or her own home. (*Division of Disability, Aging, and Rehabilitative Services; 460 IAC 6-3-29.5; filed Aug 29, 2003, 10:30 a.m.: 27 IR 102*)

460 IAC 6-3-30 “Individual” defined

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-11-1.1-9; IC 12-11-2.1-12
Affected: IC 12-11-1.1; IC 12-11-2.1-1

Sec. 30. “Individual” means an individual with a developmental disability who has been determined eligible for services by a service coordinator pursuant to IC 12-11-2.1-1. 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 6-3-30; filed Nov 4, 2002, 12:04 p.m.: 26 IR 752*)

460 IAC 6-3-31 “Individual community living budget” or “ICLB” defined

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-11-1.1-9; IC 12-11-2.1-12
Affected: IC 12-11-1.1; IC 12-11-2.1

Sec. 31. “Individual community living budget” or “ICLB” means the format used by the BDDS to:

- (1) uniformly account for all:
 - (A) services to be provided as specified in the service planner and BDDS monthly service cost worksheet;
 - (B) living costs;
 - (C) sources and amounts of income and benefits; and
 - (D) other financial issues;

of an individual; and

- (2) approve the allocation of state funding for specified services for the individual.

(*Division of Disability, Aging, and Rehabilitative Services; 460 IAC 6-3-31; filed Nov 4, 2002, 12:04 p.m.: 26 IR 752; filed Aug 29, 2003, 10:30 a.m.: 27 IR 102*)

460 IAC 6-3-32 “Individualized support plan” or “ISP” defined

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-11-1.1-9; IC 12-11-2.1-12
Affected: IC 12-11-1.1; IC 12-11-2.1

Sec. 32. “Individualized support plan” or “ISP” means a plan that establishes supports and strategies, based upon the person centered planning process, intended to accomplish the individual’s long term and short term outcomes by accommodating the financial and human resources offered to the individual through paid provider services or volunteer services, or both, as designed and agreed upon by the individual’s support team. (*Division of Disability, Aging, and Rehabilitative Services; 460 IAC 6-3-32; filed Nov 4, 2002, 12:04 p.m.: 26 IR 753; filed Aug 29, 2003, 10:30 a.m.: 27 IR 102*)

460 IAC 6-3-33 “Integrated setting” defined

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-11-1.1-9; IC 12-11-2.1-12
Affected: IC 12-11-1.1; IC 12-11-2.1

Sec. 33. “Integrated setting” means a setting in which at least fifty-one percent (51%) of the persons working in the setting are not disabled, except for the persons providing services under this article. (*Division of Disability, Aging, and Rehabilitative Services; 460 IAC 6-3-33; filed Nov 4, 2002, 12:04 p.m.: 26 IR 753*)

460 IAC 6-3-34 “Legal representative” defined

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-11-1.1-9; IC 12-11-2.1-12
Affected: IC 12-10-13-3.3; IC 12-11-1.1; IC 12-11-2.1

Sec. 34. “Legal representative” has the meaning set forth in IC 12-10-13-3.3. (*Division of Disability, Aging, and Rehabilitative Services; 460 IAC 6-3-34; filed Nov 4, 2002, 12:04 p.m.: 26 IR 753*)

460 IAC 6-3-35 “Music therapy services” defined

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-11-1.1-9; IC 12-11-2.1-12
Affected: IC 12-11-1.1; IC 12-11-2.1

Sec. 35. “Music therapy services” means services provided under this article for the systematic application of music in the treatment of the physiological and psychosocial aspects of an individual’s disability and focusing on the acquisition of nonmusical skills and behaviors. (*Division of Disability, Aging, and Rehabilitative Services; 460 IAC 6-3-35; filed Nov 4, 2002, 12:04 p.m.: 26 IR 753*)

460 IAC 6-3-36 “Neglect” defined

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-11-1.1-9; IC 12-11-2.1-12
Affected: IC 12-11-1.1; IC 12-11-2.1

Sec. 36. “Neglect” means failure to provide supervision, training, appropriate care, food, medical care, or medical supervision to an individual. (*Division of Disability, Aging, and Rehabilitative Services; 460 IAC 6-3-36; filed Nov 4, 2002, 12:04 p.m.: 26 IR 753*)

460 IAC 6-3-37 “Nutritional counseling services” defined

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-11-1.1-9; IC 12-11-2.1-12
Affected: IC 12-11-1.1; IC 12-11-2.1

Sec. 37. “Nutritional counseling services” means services provided under this article by a licensed dietician. (*Division of Disability, Aging, and Rehabilitative Services; 460 IAC 6-3-37; filed Nov 4, 2002, 12:04 p.m.: 26 IR 753*)

460 IAC 6-3-38 “Occupational therapy services” defined

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-11-1.1-9; IC 12-11-2.1-12
Affected: IC 12-11-1.1; IC 12-11-2.1

Sec. 38. “Occupational therapy services” means services provided under this article by a licensed occupational therapist. (*Division of Disability, Aging, and Rehabilitative Services; 460 IAC 6-3-38; filed Nov 4, 2002, 12:04 p.m.: 26 IR 753*)

460 IAC 6-3-38.5 “Person centered planning” defined

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-11-1.1-9; IC 12-11-2.1-12
Affected: IC 12-11-1.1; IC 12-11-2.1

Sec. 38.5. “Person centered planning” means a process that:

- (1) allows an individual, the individual’s legal representative, if applicable, and any other person chosen by the individual to direct the planning and allocation of resources to meet the individual’s life goals;
- (2) achieves understanding of how an individual:
 - (A) learns;
 - (B) makes decisions; and
 - (C) is and can be productive;
- (3) discovers what the individual likes and dislikes; and
- (4) empowers an individual and the individual’s family to create a life plan and corresponding ISP for the individual that:
 - (A) is based on the individual’s preferences, dreams, and needs;
 - (B) encourages and supports the individual’s long term hopes and dreams;
 - (C) is supported by a short term plan that is based on reasonable costs, given the individual’s support needs;
 - (D) includes individual responsibility; and
 - (E) includes a range of supports, including funded, community, and natural supports.

(*Division of Disability, Aging, and Rehabilitative Services; 460 IAC 6-3-38.5; filed Aug 29, 2003, 10:30 a.m.: 27 IR 103*)

460 IAC 6-3-38.6 “Person centered planning facilitation services” defined

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-11-1.1-9; IC 12-11-2.1-12
Affected: IC 12-11-1.1; IC 12-11-2.1

Sec. 38.6. “Person centered planning facilitation services” means services that are provided by a provider other than a provider of case management services that guide an individual through the person centered planning process. (*Division of Disability, Aging, and Rehabilitative Services; 460 IAC 6-3-38.6; filed Aug 29, 2003, 10:30 a.m.: 27 IR 103*)

460 IAC 6-3-39 “Personal emergency response system supports” defined

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-11-1.1-9; IC 12-11-2.1-12
Affected: IC 12-11-1.1; IC 12-11-2.1

Sec. 39. “Personal emergency response system supports” means an electronic communication device that allows an individual to communicate the need for immediate assistance in case of an emergency. (*Division of Disability, Aging, and Rehabilitative Services; 460 IAC 6-3-39; filed Nov 4, 2002, 12:04 p.m.: 26 IR 753*)

460 IAC 6-3-40 “Physical therapy services” defined

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-11-1.1-9; IC 12-11-2.1-12
Affected: IC 12-11-1.1; IC 12-11-2.1

Sec. 40. “Physical therapy services” means services provided under this article by a licensed physical therapist. (*Division of Disability, Aging, and Rehabilitative Services; 460 IAC 6-3-40; filed Nov 4, 2002, 12:04 p.m.: 26 IR 753*)

460 IAC 6-3-41 “Prevocational services” defined

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-11-1.1-9; IC 12-11-2.1-12
Affected: IC 12-11-1.1; IC 12-11-2.1

Sec. 41. “Prevocational services” means services aimed at preparing an individual for paid or unpaid employment, by teaching such concepts as compliance, attendance, task completion, problem solving, and safety. (*Division of Disability, Aging, and Rehabilitative Services; 460 IAC 6-3-41; filed Nov 4, 2002, 12:04 p.m.: 26 IR 753*)

460 IAC 6-3-41.1 “PRN” defined

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-11-1.1-9; IC 12-11-2.1-12
Affected: IC 12-11-1.1; IC 12-11-2.1

Sec. 41.1. “PRN” means pro re nata as needed; as the circumstances require when used in writing a prescription. (*Division of Disability, Aging, and Rehabilitative Services; 460 IAC 6-3-41.1; filed Aug 29, 2003, 10:30 a.m.: 27 IR 103*)

460 IAC 6-3-42 “Provider” defined

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-11-1.1-9; IC 12-11-2.1-12
Affected: IC 12-11-1.1; IC 12-11-2.1

Sec. 42. “Provider” means a person or entity approved by the BDDS to provide the individual with agreed upon services. (*Division of Disability, Aging, and Rehabilitative Services; 460 IAC 6-3-42; filed Nov 4, 2002, 12:04 p.m.: 26 IR 754*)

460 IAC 6-3-43 “Recreational therapy services” defined

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-11-1.1-9; IC 12-11-2.1-12
Affected: IC 12-11-1.1; IC 12-11-2.1

Sec. 43. “Recreational therapy services” means services provided under this article and consisting of a medically approved

recreational program to restore, remediate, or rehabilitate an individual in order to:

- (1) improve the individual's functioning and independence; and
- (2) reduce or eliminate the effects of an individual's disability.

(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 6-3-43; filed Nov 4, 2002, 12:04 p.m.: 26 IR 754)

460 IAC 6-3-44 "Rent and food for an unrelated live-in caregiver supports" defined

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-11-1.1-9; IC 12-11-2.1-12

Affected: IC 12-11-1.1; IC 12-11-2.1

Sec. 44. "Rent and food for an unrelated live-in caregiver supports" means the additional cost an individual incurs for the room and board of an unrelated, live-in caregiver as provided for in the individual's ICLB. *(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 6-3-44; filed Nov 4, 2002, 12:04 p.m.: 26 IR 754)*

460 IAC 6-3-45 "Reportable incident" defined

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-11-1.1-9; IC 12-11-2.1-12

Affected: IC 12-11-1.1; IC 12-11-2.1

Sec. 45. "Reportable incident" refers to incidents described in 460 IAC 6-9-5. *(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 6-3-45; filed Nov 4, 2002, 12:04 p.m.: 26 IR 754)*

460 IAC 6-3-46 "Residential-based habilitation and support services" defined

Authority: IC 12-8-8-4; IC 12-11-1.1-9; IC 12-11-2.1-12

Affected: IC 12-11-1.1; IC 12-11-2.1

Sec. 46. "Residential-based habilitation and support services" means services that are designed to ensure the health, safety, and welfare of an individual, and assist in the acquisition, improvement, and retention of skills necessary for the individual to live successfully in the individual's own home. *(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 6-3-46; filed Nov 4, 2002, 12:04 p.m.: 26 IR 754)*

460 IAC 6-3-47 "Residential living allowance" defined

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-11-1.1-9; IC 12-11-2.1-12

Affected: IC 12-11-1.1-2; IC 12-11-2.1

Sec. 47. "Residential living allowance" means funds authorized by the BDDS services under IC 12-11-1.1-2(c) to cover the actual costs of room and board expenses as authorized in the individual's ICLB. *(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 6-3-47; filed Nov 4, 2002, 12:04 p.m.: 26 IR 754)*

460 IAC 6-3-48 "Residential living allowance management services" defined

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-11-1.1-9; IC 12-11-2.1-12

Affected: IC 12-11-1.1; IC 12-11-2.1

Sec. 48. "Residential living allowance management services" means services that assist an individual in managing the individual's residential living allowance supports. *(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 6-3-48; filed Nov 4, 2002, 12:04 p.m.: 26 IR 754)*

460 IAC 6-3-49 "Respite care services" defined

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-11-1.1-9; IC 12-11-2.1-12

Affected: IC 12-11-1.1; IC 12-11-2.1

Sec. 49. "Respite care services" means services provided to individuals unable to care for themselves that are furnished on

a short term basis because of the absence or need for relief of those persons normally providing care. (*Division of Disability, Aging, and Rehabilitative Services; 460 IAC 6-3-49; filed Nov 4, 2002, 12:04 p.m.: 26 IR 754*)

460 IAC 6-3-50 “Secretary” defined

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-11-1.1-9; IC 12-11-2.1-12

Affected: IC 12-8-1-2; IC 12-11-1.1; IC 12-11-2.1

Sec. 50. “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 6-3-50; filed Nov 4, 2002, 12:04 p.m.: 26 IR 754*)

460 IAC 6-3-51 “Service coordinator” defined

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-11-1.1-9; IC 12-11-2.1-12

Affected: IC 12-11-1.1; IC 12-11-2.1

Sec. 51. “Service coordinator” means a service coordinator employed by the BDDS under IC 12-11-2.1. (*Division of Disability, Aging, and Rehabilitative Services; 460 IAC 6-3-51; filed Nov 4, 2002, 12:04 p.m.: 26 IR 754*)

460 IAC 6-3-52 “Specialized medical equipment and supplies supports” defined

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-11-1.1-9; IC 12-11-2.1-12

Affected: IC 12-11-1.1; IC 12-11-2.1

Sec. 52. (a) “Specialized medical equipment and supplies supports” means devices, controls, or appliances that:

(1) enable an individual to increase the individual’s abilities to:

(A) perform activities of daily living; or

(B) perceive or control the environment; or

(2) enhance an individual’s ability to communicate.

(b) The term includes the following:

(1) Communication devices.

(2) Interpreter services.

(3) Items necessary for life support.

(4) Ancillary supplies and equipment necessary for the proper functioning of such items.

(5) Durable and nondurable medical equipment.

(*Division of Disability, Aging, and Rehabilitative Services; 460 IAC 6-3-52; filed Nov 4, 2002, 12:04 p.m.: 26 IR 754*)

460 IAC 6-3-52.1 “Service planner” defined

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-11-1.1-9; IC 12-11-2.1-12

Affected: IC 12-11-1.1; IC 12-11-2.1

Sec. 52.1. “Service planner” means the worksheet approved by a BDDS service coordinator that outlines on a weekly basis:

(1) the services an individual is to receive; and

(2) the intensity of those services, including staffing levels, if applicable.

(*Division of Disability, Aging, and Rehabilitative Services; 460 IAC 6-3-52.1; filed Aug 29, 2003, 10:30 a.m.: 27 IR 103*)

460 IAC 6-3-53 “Speech and language therapy services” defined

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-11-1.1-9; IC 12-11-2.1-12

Affected: IC 12-11-1.1; IC 12-11-2.1

Sec. 53. “Speech and language therapy services” means services provided by a licensed speech pathologist under this article. (*Division of Disability, Aging, and Rehabilitative Services; 460 IAC 6-3-53; filed Nov 4, 2002, 12:04 p.m.: 26 IR 755*)

460 IAC 6-3-54 “Support team” defined

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-11-1.1-9; IC 12-11-2.1-12
Affected: IC 12-11-1.1; IC 12-11-2.1

Sec. 54. “Support team” means a team of persons, including an individual, the individual’s legal representative, if applicable, the individual’s providers, provider of case management services, and other persons who:

- (1) are designated by the individual;
- (2) know and work with the individual; and
- (3) participate in the development and implementation of the individual’s ISP.

(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 6-3-54; filed Nov 4, 2002, 12:04 p.m.: 26 IR 755)

460 IAC 6-3-55 “Supported employment services” defined

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-11-1.1-9; IC 12-11-2.1-12
Affected: IC 12-11-1.1; IC 12-11-2.1

Sec. 55. “Supported employment services” means services that support and enable an individual to secure and maintain paid employment if the individual is paid at or above the federal minimum wage. *(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 6-3-55; filed Nov 4, 2002, 12:04 p.m.: 26 IR 755)*

460 IAC 6-3-56 “Therapy services” defined

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-11-1.1-9; IC 12-11-2.1-12
Affected: IC 12-11-1.1; IC 12-11-2.1; IC 25-33-1-5.1

Sec. 56. “Therapy services” means services provided under this article by a licensed psychologist with an endorsement as a health service provider in psychology pursuant to IC 25-33-1-5.1(c), a licensed marriage and family therapist, a licensed clinical social worker, or a licensed mental health counselor. *(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 6-3-56; filed Nov 4, 2002, 12:04 p.m.: 26 IR 755; filed Aug 29, 2003, 10:30 a.m.: 27 IR 103)*

460 IAC 6-3-57 “Transportation services” defined

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-11-1.1-9; IC 12-11-2.1-12
Affected: IC 12-11-1.1; IC 12-11-2.1

Sec. 57. “Transportation services” means services for the transportation of an individual in a vehicle by a provider approved under this article to provide transportation services. *(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 6-3-57; filed Nov 4, 2002, 12:04 p.m.: 26 IR 755)*

460 IAC 6-3-58 “Transportation supports” defined

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-11-1.1-9; IC 12-11-2.1-12
Affected: IC 12-11-1.1; IC 12-11-2.1

Sec. 58. “Transportation supports” means supports, such as tickets and passes to ride on public transportation systems, that enable an individual to have transportation for access to the community. *(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 6-3-58; filed Nov 4, 2002, 12:04 p.m.: 26 IR 755)*

Rule 4. Types of Supported Living Services and Supports

460 IAC 6-4-1 Types of supported living services and supports

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-11-1.1-9; IC 12-11-2.1-12
Affected: IC 12-11-1.1; IC 12-11-2.1

Sec. 1. Supported living services and supports include the following:

- (1) Adult day services.
- (2) Adult foster care services.
- (3) Behavioral support services.
- (4) Case management services.
- (5) Community-based sheltered employment services.
- (6) Community education and therapeutic activity services.
- (7) Community habilitation and participation services.
- (8) Crisis assistance services.
- (9) Enhanced dental services.
- (10) Environmental modification supports.
- (11) Facility-based sheltered employment services.
- (12) Family and caregiver training services.
- (13) Health care coordination services.
- (14) Music therapy services.
- (15) Nutritional counseling services.
- (16) Occupational therapy services.
- (17) Personal emergency response system supports.
- (18) Physical therapy services.
- (19) Prevocational services.
- (20) Therapy services.
- (21) Recreational therapy services.
- (22) Rent and food for unrelated live-in caregiver supports.
- (23) Residential habilitation and support services.
- (24) Residential living allowance and management services.
- (25) Respite care services.
- (26) Specialized medical equipment and supplies supports.
- (27) Speech-language therapy services.
- (28) Supported employment services.
- (29) Transportation services.
- (30) Transportation supports.
- (31) Applied behavior analysis services.
- (32) Children's foster care services.
- (33) Community transition supports.
- (34) Independence assistance services.
- (35) Person centered planning facilitation services.

(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 6-4-1; filed Nov 4, 2002, 12:04 p.m.: 26 IR 755; filed Aug 29, 2003, 10:30 a.m.: 27 IR 103)

Rule 5. Provider Qualifications

460 IAC 6-5-1 Applicability

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-11-1.1-9; IC 12-11-2.1-12

Affected: IC 12-11-1.1; IC 12-11-2.1

Sec. 1. This rule applies to all supported living services and supports. *(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 6-5-1; filed Nov 4, 2002, 12:04 p.m.: 26 IR 756)*

460 IAC 6-5-2 Adult day services provider qualifications

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-11-1.1-9; IC 12-11-2.1-12
Affected: IC 12-11-1.1; IC 12-11-2.1

Sec. 2. To be approved to provide adult day services, an applicant shall be an approved adult day service provider for Medicaid waiver in-home services. (*Division of Disability, Aging, and Rehabilitative Services; 460 IAC 6-5-2; filed Nov 4, 2002, 12:04 p.m.: 26 IR 756*)

460 IAC 6-5-3 Adult foster care services provider qualifications

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-11-1.1-9; IC 12-11-2.1-12
Affected: IC 12-11-1.1; IC 12-11-2.1

Sec. 3. To be approved to provide adult foster care services, an applicant shall:

- (1) be an entity approved to provide supported living services under this article; and
- (2) certify that, if approved, the entity will provide adult foster care services using only persons who meet the qualifications set out in 460 IAC 6-14-5.

(*Division of Disability, Aging, and Rehabilitative Services; 460 IAC 6-5-3; filed Nov 4, 2002, 12:04 p.m.: 26 IR 756*)

460 IAC 6-5-4 Behavioral support services provider qualifications

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-11-1.1-9; IC 12-11-2.1-12
Affected: IC 12-11-1.1; IC 12-11-2.1; IC 25-23.6; IC 25-33-1-5.1

Sec. 4. (a) Until January 1, 2003, to be approved to provide behavioral support services as a Level 1 clinician, an applicant shall meet the following requirements:

(1) Be a licensed psychologist under IC 25-33 and have an endorsement as a health service provider in psychology pursuant to IC 25-33-1-5.1(c).

(2) Have:

(A) at least a master's degree in:

- (i) a behavioral science;
- (ii) special education; or
- (iii) social work; and

(B) evidence of five (5) years of experience in:

- (i) working directly with individuals with developmental disabilities, including the devising, implementing, and monitoring of behavioral support plans; and
- (ii) the supervision and training of others in the implementation of behavioral support plans.

(b) Effective January 1, 2003, to be approved to provide behavioral support services as a licensed Level 1 clinician, an applicant shall be a licensed psychologist under IC 25-33 and have an endorsement as a health service provider in psychology pursuant to IC 25-33-1-5.1(c).

(c) To be approved to provide behavioral support services as a Level 2 clinician, an applicant shall meet the following requirements:

(1) Either:

(A) have a master's degree in:

- (i) clinical psychology, counseling psychology, school psychology, or another applied health service area of psychology;
- (ii) special education;
- (iii) social work; or
- (iv) counseling;

(B) be a licensed marriage and family therapist licensed under IC 25-23.6;

(C) be a licensed clinical social worker under IC 25-23.6;

(D) be a licensed mental health counselor under IC 25-23.6;

(E) have a master's degree in a human services field and be able to demonstrate to the BDDS behavior management committee that the individual has either coursework in or five (5) years of experience in devising, implementing, and monitoring behavior support plans; or

(F) meet all of the following requirements:

(i) Have a bachelor's degree.

(ii) Be employed as a behavioral consultant on or before September 30, 2001, by a provider of behavioral support services approved under this article.

(iii) Be working on a master's degree in psychology, special education, or social work.

(iv) By December 31, 2006, complete a master's degree in clinical psychology, school psychology, or another applied health service area of psychology, special education, or social work.

(2) Be supervised by a Level 1 clinician.

(d) To maintain approval as a behavioral support services provider, a behavioral support services provider shall:

(1) obtain annually at least ten (10) continuing education hours related to the practice of behavioral support:

(A) from a Category I sponsor as provided in 868 IAC 1.1-15; or

(B) as provided by the BDDS's behavioral support curriculum list; or

(2) be enrolled in:

(A) a master's level program in clinical psychology, counseling psychology, school psychology, or another applied health services area of psychology, or special education, or social work; or

(B) a doctoral program in psychology.

(e) For an entity to be approved to provide behavioral support services, the entity shall certify that, if approved, the entity shall provide Level 1 clinician behavioral support services or Level 2 clinician behavioral support services using only persons who meet the qualifications set out in this section. If a provider is using a Level 2 clinician under subsection (c)(1)(F), the provider shall certify that the Level 2 clinician will not provide services under this rule until the BDDS behavior management committee has approved the credentials of the Level 2 clinician.

(f) The provisions in subsection (c)(1)(F) expire on December 31, 2006. (*Division of Disability, Aging, and Rehabilitative Services; 460 IAC 6-5-4; filed Nov 4, 2002, 12:04 p.m.: 26 IR 756; filed Aug 29, 2003, 10:30 a.m.: 27 IR 104*)

460 IAC 6-5-5 Case management services provider qualifications

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-11-1.1-9; IC 12-11-2.1-12

Affected: IC 12-11-1.1; IC 12-11-2.1; IC 25-23-1

Sec. 5. (a) To be approved to provide case management services as a Level 1 case management services provider, an applicant shall meet the following requirements:

(1) Have a bachelor's degree, be a registered nurse licensed under IC 25-23-1, or be employed by the state in a PAT III position.

(2) Meet the experience requirements for a qualified mental retardation professional in 42 CFR 483.430(a).

(3) Complete a course of case management orientation that is approved by the BDDS.

(b) To be approved to provide case management services as a Level 2 case management services provider, an applicant shall meet the following requirements:

(1) Have at least a four (4) year college degree with no direct care experience; or

(2) Have a high school diploma, or equivalent, and have a least five (5) years experience working with persons with mental retardation or other developmental disabilities; and

(3) Be supervised by a Level 1 case management services provider who is supervising no more than four (4) other Level 2 case management services providers.

(4) Complete a course of case management orientation that is approved by the BDDS.

(c) For an entity to be approved to provide case management services, the entity shall certify that, if approved, the entity will provide case management services using only persons who meet the qualifications set out in this section. (*Division of Disability, Aging, and Rehabilitative Services; 460 IAC 6-5-5; filed Nov 4, 2002, 12:04 p.m.: 26 IR 757*)

460 IAC 6-5-6 Community-based sheltered employment services provider qualifications

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-11-1.1-9; IC 12-11-2.1-12
Affected: IC 12-11-1.1; IC 12-11-2.1

Sec. 6. To be approved to provide community-based sheltered employment services, an applicant shall meet the following requirements:

- (1) Be an entity.
- (2) Be accredited by one (1) of following organizations:
 - (A) The Commission on Accreditation of Rehabilitation Facilities (CARF) or its successor.
 - (B) The Council on Quality and Leadership in Supports for People with Disabilities or its successor.
 - (C) The Joint Commission on Accreditation of Healthcare Organizations (JACHO [*sic.*, *JCAHO*]) or its successor.
 - (D) The National Commission on Quality Assurance or its successor.
 - (E) An independent national accreditation organization approved by the secretary.
- (3) Be a not-for-profit entity.
- (4) Certify that, if approved, the entity will provide community-based sheltered employment services using only persons who meet the qualifications set out in 460 IAC 6-14-5.
- (5) Not be a community mental health center.

(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 6-5-6; filed Nov 4, 2002, 12:04 p.m.: 26 IR 757)

460 IAC 6-5-7 Community education and therapeutic activity services provider qualifications

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-11-1.1-9; IC 12-11-2.1-12
Affected: IC 12-11-1.1; IC 12-11-2.1

Sec. 7. To be approved to provide community education and therapeutic activities services, an applicant shall be otherwise approved to provide supported living services approved under this article. *(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 6-5-7; filed Nov 4, 2002, 12:04 p.m.: 26 IR 757; filed Aug 29, 2003, 10:30 a.m.: 27 IR 105)*

460 IAC 6-5-8 Community habilitation and participation services provider qualifications

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-11-1.1-9; IC 12-11-2.1-12
Affected: IC 12-11-1.1; IC 12-11-2.1

Sec. 8. (a) To be approved to provide community habilitation and participation services, an applicant shall meet the requirements for direct care staff set out in 460 IAC 6-14-5.

(b) For an entity to be approved to provide community habilitation and participation services, the entity shall certify that, if approved, the entity will provide community habilitation and support services using only persons who meet the qualifications set out in 460 IAC 6-14-5. *(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 6-5-8; filed Nov 4, 2002, 12:04 p.m.: 26 IR 757)*

460 IAC 6-5-9 Crisis assistance services provider qualifications

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-11-1.1-9; IC 12-11-2.1-12
Affected: IC 12-11-1.1; IC 12-11-2.1

Sec. 9. To be approved to provide crisis assistance services, an applicant shall be approved to provide behavioral support services under this article. *(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 6-5-9; filed Nov 4, 2002, 12:04 p.m.: 26 IR 757)*

460 IAC 6-5-10 Enhanced dental services provider qualifications

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-11-1.1-9; IC 12-11-2.1-12
Affected: IC 12-11-1.1; IC 12-11-2.1; IC 25-14

Sec. 10. (a) To be approved to provide enhanced dental services, an applicant shall be a dentist licensed under IC 25-14.

(b) For an entity to be approved to provide enhanced dental services, the entity shall certify that, if approved, the entity will provide enhanced dental services using only persons who meet the qualifications set out in this section. (*Division of Disability, Aging, and Rehabilitative Services; 460 IAC 6-5-10; filed Nov 4, 2002, 12:04 p.m.: 26 IR 758*)

460 IAC 6-5-11 Environmental modification supports provider qualifications

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-11-1.1-9; IC 12-11-2.1-12

Affected: IC 12-11-1.1; IC 12-11-2.1

Sec. 11. To be approved to provide environmental modification supports, an applicant shall:

- (1) be licensed, certified, registered, or otherwise properly qualified under federal, state, or local laws applicable to the particular service that the applicant desires to perform; and
- (2) certify that, if approved, the applicant will perform the services in compliance with federal, state, or local laws applicable to the type of modification being made.

(*Division of Disability, Aging, and Rehabilitative Services; 460 IAC 6-5-11; filed Nov 4, 2002, 12:04 p.m.: 26 IR 758*)

460 IAC 6-5-12 Facility-based sheltered employment services provider qualifications

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-11-1.1-9; IC 12-11-2.1-12

Affected: IC 12-11-1.1; IC 12-11-2.1

Sec. 12. To be approved to provide facility-based sheltered employment services, an applicant shall meet the following requirements:

- (1) Be an entity.
- (2) Be accredited, or provide proof of an application to seek accreditation, by one (1) of the following organizations:
 - (A) The Commission on Accreditation of Rehabilitation Facilities (CARF) or its successor.
 - (B) The Council on Quality and Leadership in Supports for People with Disabilities or its successor.
 - (C) The Joint Commission on Accreditation of Healthcare Organizations (JACHO [*sic.*, *JCAHO*]) or its successor.
 - (D) The National Commission on Quality Assurance or its successor.
 - (E) An independent national accreditation organization approved by the secretary.
- (3) Be a not-for-profit entity.
- (4) Have sheltered workshop certification from the wage and hour division of the United States Department of Labor.
- (5) Certify that, if approved, the entity will provide services using only persons who meet the qualifications set out in 460 IAC 6-14-5.

(*Division of Disability, Aging, and Rehabilitative Services; 460 IAC 6-5-12; filed Nov 4, 2002, 12:04 p.m.: 26 IR 758*)

460 IAC 6-5-13 Family and caregiver training services provider qualifications

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-11-1.1-9; IC 12-11-2.1-12

Affected: IC 12-11-1.1; IC 12-11-2.1

Sec. 13. To be approved to provide family and caregiver training services, an applicant shall be approved to provide either:

- (1) community habilitation and participation services; or
- (2) residential habilitation and support services;

under this article. (*Division of Disability, Aging, and Rehabilitative Services; 460 IAC 6-5-13; filed Nov 4, 2002, 12:04 p.m.: 26 IR 758*)

460 IAC 6-5-14 Health care coordination services provider qualifications

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-11-1.1-9; IC 12-11-2.1-12

Affected: IC 12-11-1.1; IC 12-11-2.1; IC 25-23-1

Sec. 14. (a) To be approved to provide health care coordination services, an applicant shall be either a registered nurse or

licensed practical nurse under IC 25-23-1.

(b) For an entity to be approved to provide health care coordination services, the entity shall certify that, if approved, the entity will provide health care coordination services using only persons who meet the qualifications set out in this section. (*Division of Disability, Aging, and Rehabilitative Services; 460 IAC 6-5-14; filed Nov 4, 2002, 12:04 p.m.: 26 IR 758*)

460 IAC 6-5-15 Music therapy services provider qualifications

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-11-1.1-9; IC 12-11-2.1-12

Affected: IC 12-11-1.1; IC 12-11-2.1

Sec. 15. (a) To be approved to provide music therapy services, an applicant shall be certified by the National Association of Music Therapists.

(b) For an entity to be approved to provide music therapy services, the entity shall certify that, if approved, the entity will provide music therapy services using only persons who meet the qualifications set out in this section. (*Division of Disability, Aging, and Rehabilitative Services; 460 IAC 6-5-15; filed Nov 4, 2002, 12:04 p.m.: 26 IR 758*)

460 IAC 6-5-16 Nutritional counseling services provider qualifications

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-11-1.1-9; IC 12-11-2.1-12

Affected: IC 12-11-1.1; IC 12-11-2.1; IC 25-14.5

Sec. 16. (a) To be approved to provide nutritional counseling services, an applicant shall be a dietitian certified under IC 25-14.5.

(b) For an entity to be approved to provide nutritional counseling services, the entity shall certify that, if approved, the entity will provide nutritional counseling services using only persons who meet the qualifications set out in this section. (*Division of Disability, Aging, and Rehabilitative Services; 460 IAC 6-5-16; filed Nov 4, 2002, 12:04 p.m.: 26 IR 759*)

460 IAC 6-5-17 Occupational therapy services provider qualifications

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-11-1.1-9; IC 12-11-2.1-12

Affected: IC 12-11-1.1; IC 12-11-2.1; IC 25-23.5-1-5.5; IC 25-23.5-5

Sec. 17. (a) To be approved to provide occupational therapy services as an occupational therapist, an applicant shall be an occupational therapist certified under IC 25-23.5.

(b) To be approved to provide occupational therapy services as an occupational therapy assistant, an applicant shall be certified under IC 25-23.5-5.

(c) To be approved to provide occupational therapy services as an occupational therapy aide, an applicant shall meet the requirements of IC 25-23.5-1-5.5 and 844 IAC 10-6.

(d) For an entity to be approved to provide occupational therapy services, the entity shall certify that, if approved, the entity will provide occupational therapy services using only persons who meet the qualifications set out in this section. (*Division of Disability, Aging, and Rehabilitative Services; 460 IAC 6-5-17; filed Nov 4, 2002, 12:04 p.m.: 26 IR 759*)

460 IAC 6-5-18 Personal emergency response system supports provider qualifications

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-11-1.1-9; IC 12-11-2.1-12

Affected: IC 12-11-1.1; IC 12-11-2.1

Sec. 18. To be approved to provide personal emergency response system supports, an applicant shall:

(1) be licensed, certified, registered, or otherwise properly qualified under federal, state, or local laws applicable to the particular service that the applicant desires to perform; and

(2) certify that, if approved, the applicant will perform the services in compliance with federal, state, or local laws applicable to a personal emergency response system.

(*Division of Disability, Aging, and Rehabilitative Services; 460 IAC 6-5-18; filed Nov 4, 2002, 12:04 p.m.: 26 IR 759*)

460 IAC 6-5-19 Physical therapy services provider qualifications

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-11-1.1-9; IC 12-11-2.1-12
Affected: IC 12-11-1.1; IC 12-11-2.1; IC 25-27-1

Sec. 19. (a) To be approved to provide physical therapy services as a physical therapist, an applicant shall be a physical therapist licensed under IC 25-27-1.

(b) To be approved to provide physical therapy services as a physical therapist's assistant, an applicant shall be certified under IC 25-27-1.

(c) For an entity to be approved to provide physical therapy services, the entity shall certify that, if approved, the entity will provide physical therapy services using only persons who meet the qualifications set out in this section. (*Division of Disability, Aging, and Rehabilitative Services; 460 IAC 6-5-19; filed Nov 4, 2002, 12:04 p.m.: 26 IR 759*)

460 IAC 6-5-20 Prevocational services provider qualifications

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-11-1.1-9; IC 12-11-2.1-12
Affected: IC 12-11-1.1; IC 12-11-2.1

Sec. 20. (a) To be approved to provide prevocational services, an applicant shall meet the requirements for direct care staff set out in 460 IAC 6-14-5.

(b) For an entity to be approved to provide prevocational services, the entity shall certify that, if approved, the entity will provide prevocational services using only persons who meet the qualification set out in 460 IAC 6-14-5. (*Division of Disability, Aging, and Rehabilitative Services; 460 IAC 6-5-20; filed Nov 4, 2002, 12:04 p.m.: 26 IR 759*)

460 IAC 6-5-21 Therapy services provider qualifications

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-11-1.1-9; IC 12-11-2.1-12
Affected: IC 12-11-1.1; IC 12-11-2.1; IC 25-23.6; IC 25-33-1-5.1

Sec. 21. (a) To be approved to provide therapy services, an applicant shall be:

(1) a psychologist licensed under IC 25-33-1 and have an endorsement as a health service provider in psychology pursuant to IC 25-33-1-5.1(c);

(2) a marriage and family therapist licensed under IC 25-23.6;

(3) a clinical social worker licensed under IC 25-23.6; or

(4) a mental health counselor licensed under IC 25-23.6.

(b) For an entity to be approved to provide therapy services, the entity shall certify that, if approved, the entity will provide therapy services using only persons who meet the qualifications set out in this section. (*Division of Disability, Aging, and Rehabilitative Services; 460 IAC 6-5-21; filed Nov 4, 2002, 12:04 p.m.: 26 IR 759; filed Aug 29, 2003, 10:30 a.m.: 27 IR 105*)

460 IAC 6-5-22 Recreational therapy services provider qualifications

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-11-1.1-9; IC 12-11-2.1-12
Affected: IC 12-11-1.1; IC 12-11-2.1

Sec. 22. (a) To be approved to provide recreational therapy services, an applicant shall be certified by the national council for therapeutic recreation certification.

(b) To be approved to provide recreational therapy services, an entity shall certify that, if approved, the entity will provide recreational therapy services using only persons who meet the qualifications set out in this section. (*Division of Disability, Aging, and Rehabilitative Services; 460 IAC 6-5-22; filed Nov 4, 2002, 12:04 p.m.: 26 IR 760*)

460 IAC 6-5-23 Rent and food for unrelated live-in caregiver supports provider qualifications

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-11-1.1-9; IC 12-11-2.1-12
Affected: IC 12-11-1.1; IC 12-11-2.1

Sec. 23. To be approved to provide rent and food for unrelated live-in caregiver supports, an applicant shall be approved to provide:

- (1) community habilitation and participation services; or
- (2) residential habilitation and support services;

under this article. (*Division of Disability, Aging, and Rehabilitative Services; 460 IAC 6-5-23; filed Nov 4, 2002, 12:04 p.m.: 26 IR 760*)

460 IAC 6-5-24 Residential habilitation and support services provider qualifications

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-11-1.1-9; IC 12-11-2.1-12
Affected: IC 12-11-1.1; IC 12-11-2.1

Sec. 24. (a) To be approved to provide residential habilitation and support services, an applicant shall meet the requirements for direct care staff set out in 460 IAC 6-14-5.

(b) In order an entity to be approved to provide residential habilitation and support services, the entity shall certify that, if approved, the entity will provide residential habilitation and support services using only persons who meet the qualifications set out in 460 IAC 6-14-5. (*Division of Disability, Aging, and Rehabilitative Services; 460 IAC 6-5-24; filed Nov 4, 2002, 12:04 p.m.: 26 IR 760*)

460 IAC 6-5-25 Residential living allowance and management services provider qualifications

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-11-1.1-9; IC 12-11-2.1-12
Affected: IC 12-11-1.1; IC 12-11-2.1

Sec. 25. To be approved to provide residential living allowance and management services, an applicant shall be approved to provide either:

- (1) residential habilitation and support services; or
- (2) community habilitation and participation services;

under this article. (*Division of Disability, Aging, and Rehabilitative Services; 460 IAC 6-5-25; filed Nov 4, 2002, 12:04 p.m.: 26 IR 760*)

460 IAC 6-5-26 Respite care services provider qualifications

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-11-1.1-9; IC 12-11-2.1-12
Affected: IC 12-11-1.1; IC 12-11-2.1

Sec. 26. (a) To be approved to provide respite care services, an applicant shall meet the requirements for direct care staff set out in 460 IAC 6-14-5.

(b) For an entity to be approved to provide respite care services, the entity shall meet both of the following requirements:

(1) Be one (1) of the following types of entities:

- (A) A home health agency.
- (B) An approved adult day service provider under this article.
- (C) An entity providing residential services to unrelated individuals.

(2) Certify that, if approved, the entity will provide respite care services using only persons who meet the direct care staff qualifications set out in 460 IAC 6-14-5.

(*Division of Disability, Aging, and Rehabilitative Services; 460 IAC 6-5-26; filed Nov 4, 2002, 12:04 p.m.: 26 IR 760*)

460 IAC 6-5-27 Specialized medical equipment and supplies supports provider qualifications

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-11-1.1-9; IC 12-11-2.1-12
Affected: IC 12-11-1.1; IC 12-11-2.1

Sec. 27. To be approved to provide specialized medical equipment and supplies supports, an applicant shall:

- (1) be licensed, certified, registered, or otherwise properly qualified under federal, state, or local laws applicable to the

particular service that the applicant desires to perform; and

(2) certify that, if approved, the applicant will perform the services in compliance with federal, state, or local laws applicable to the type of equipment and supplies being provided.

(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 6-5-27; filed Nov 4, 2002, 12:04 p.m.: 26 IR 760)

460 IAC 6-5-28 Speech-language therapy services provider qualifications

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-11-1.1-9; IC 12-11-2.1-12

Affected: IC 12-11-1.1; IC 12-11-2.1; IC 25-35.6-1-2

Sec. 28. (a) To be approved to provide speech-language therapy services as a speech-language pathologist, an applicant shall be a speech-language pathologist licensed under IC 25-35.6.

(b) To be approved to provide speech language therapy services as a speech-language pathology aide, an applicant shall be:

(1) a speech-language pathology aide as defined in IC 25-35.6-1-2; and

(2) registered pursuant to 880 IAC 1-2.

(c) For an entity to be approved to provide speech-language therapy services, the entity shall certify that, if approved, the entity will provide speech-language therapy services using only persons who meet the qualifications set out in this section. *(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 6-5-28; filed Nov 4, 2002, 12:04 p.m.: 26 IR 760)*

460 IAC 6-5-29 Supported employment services provider qualifications

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-11-1.1-9; IC 12-11-2.1-12

Affected: IC 12-11-1.1; IC 12-11-2.1

Sec. 29. To be approved to provide supported employment services, an applicant shall meet the following requirements:

(1) Be accredited by, or provide proof of an application to seek accreditation from, one (1) of the following organizations:

(A) The Commission on Accreditation of Rehabilitation Facilities (CARF) or its successor.

(B) The Council on Quality and Leadership in Supports for People with Disabilities or its successor.

(C) The Joint Commission on Accreditation of Healthcare Organizations (JCAHO) or its successor.

(D) The National Commission on Quality Assurance or its successor.

(E) An independent national accreditation organization approved by the secretary.

(2) Certify that, if approved, the applicant will provide services using only persons who meet the qualifications set out in 460 IAC 6-14-5.

(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 6-5-29; filed Nov 4, 2002, 12:04 p.m.: 26 IR 761)

460 IAC 6-5-30 Transportation services provider qualifications

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-11-1.1-9; IC 12-11-2.1-12

Affected: IC 12-11-1.1; IC 12-11-2.1; IC 12-17.2-2-4

Sec. 30. (a) To be approved to provide transportation services, an applicant shall be one (1) of the following:

(1) A community mental retardation and other developmental disabilities centers.

(2) A community mental health center.

(3) A child care center licensed pursuant to IC 12-17.2-2-4.

(4) Otherwise approved under this rule.

(b) To be approved to provide transportation services, an applicant shall certify that, if approved, transportation services will be provided using only persons having a valid Indiana:

(1) operator's license;

(2) chauffeur's license;

(3) public passenger chauffeur's license; or

(4) commercial driver's license;

issued to the person by the Indiana bureau of motor vehicles to drive the type of motor vehicle for which the license was issued.

(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 6-5-30; filed Nov 4, 2002, 12:04 p.m.: 26 IR 761)

460 IAC 6-5-31 Transportation supports provider qualifications

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-11-1.1-9; IC 12-11-2.1-12
Affected: IC 12-11-1.1; IC 12-11-2.1

Sec. 31. To be approved to provide transportation supports, an applicant shall be otherwise approved to provide supported living services under this article. (*Division of Disability, Aging, and Rehabilitative Services; 460 IAC 6-5-31; filed Nov 4, 2002, 12:04 p.m.: 26 IR 761*)

460 IAC 6-5-32 Applied behavior analysis services provider qualifications

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-11-1.1-9; IC 12-11-2.1-12
Affected: IC 12-11-1.1; IC 12-11-2.1; IC 25-22.5; IC 25-33-1-5.1

Sec. 32. (a) To be approved to provide applied behavior analysis services as a lead therapist, an applicant shall meet the following requirements:

(1) Either be a licensed:

(A) psychiatrist under IC 25-22.5; or

(B) psychologist under IC 25-33 and have an endorsement as a health service provider in psychology pursuant to IC 25-33-1-5.1(c).

(2) Meet all of the following requirements:

(A) Have completed at least one thousand five hundred (1,500) hours of training or supervised experience in the application of applied behavior analysis or an equivalent behavior modification theory for children with a pervasive developmental disorder.

(B) Have at least two (2) years of experience as an independent practitioner and as a supervisor of less experienced clinicians.

(b) To be approved to provide applied behavior analysis services as a senior therapist, an applicant shall either:

(1) be a psychotherapist; or

(2) meet the following requirements:

(A) Have completed at least three thousand (3,000) hours of training or supervised experience in the application of applied behavior analysis or an equivalent behavior modification theory for children with a pervasive developmental disorder.

(B) Have at least four hundred (400) hours of training or supervised experience in the use of applied behavior analysis or an equivalent behavior modification program for children with an autistic disorder, asperger's disorder, or a pervasive developmental disorder, which may be included in the three thousand (3,000) hour training requirement in clause (A).

(c) To be approved to provide applied behavior analysis services as line staff, an applicant must either:

(1) be in at least the second year of college and have obtained at least thirty (30) hours of experience utilizing intensive behavioral treatment with children with autism or at least one hundred sixty (160) hours working in any setting with children with autism; or

(2) be at least eighteen (18) years of age, a high school graduate, and have received at least two thousand (2,000) hours of training or supervised experience in the application of applied behavior analysis or an equivalent behavior modification program in a setting working with children with autism.

(d) To maintain approval as a senior therapist, a senior therapist shall obtain annually at least ten (10) continuing education hours related to applied behavior analysis:

(1) from a Category I sponsor as provided in 868 IAC 1.1-15; or

(2) as provided by the BDDS's applied behavior analysis support curriculum list.

(e) For an entity to be approved to provide applied behavior analysis services, the entity shall certify that, if approved, the entity shall provide lead therapist services, senior therapist services, or line staff services using only persons who meet the qualifications set out in this section. (*Division of Disability, Aging, and Rehabilitative Services; 460 IAC 6-5-32; filed Aug 29, 2003, 10:30 a.m.: 27 IR 105*)

460 IAC 6-5-33 Children's foster care provider qualifications

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-11-1.1-9; IC 12-11-2.1-12
Affected: IC 12-11-1.1; IC 12-11-2.1

Sec. 33. To be approved to provide children's foster care services, an applicant shall:

- (1) be an entity approved to provide supported living services under this article; and
- (2) certify that, if approved, the entity will provide children's foster care services using only persons who meet the qualifications set out in 460 IAC 6-14-5.

(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 6-5-33; filed Aug 29, 2003, 10:30 a.m.: 27 IR 106)

460 IAC 6-5-34 Community transition supports provider qualifications

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-11-1.1-9; IC 12-11-2.1-12
Affected: IC 12-11-1.1; IC 12-11-2.1

Sec. 34. To be approved to provide community transition supports, an applicant shall be approved under this article to provide residential living allowance and management services. *(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 6-5-34; filed Aug 29, 2003, 10:30 a.m.: 27 IR 106)*

460 IAC 6-5-35 Independence assistance services provider qualifications

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-11-1.1-9; IC 12-11-2.1-12
Affected: IC 12-11-1.1; IC 12-11-2.1

Sec. 35. To be approved to provide independence assistance services, an applicant shall be either:

- (1) approved to provide residential habilitation and support services under this article; or
- (2) a home health agency; and

certify that, if approved, the entity will provide independence assistance services using only persons who meet the direct care staff qualifications set out in 460 IAC 6-14-5. *(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 6-5-35; filed Aug 29, 2003, 10:30 a.m.: 27 IR 106)*

460 IAC 6-5-36 Person centered planning facilitation services provider qualifications

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-11-1.1-9; IC 12-11-2.1-12
Affected: IC 12-11-1.1; IC 12-11-2.1

Sec. 36. (a) To be approved to provide person centered planning facilitation services an applicant shall either:

- (1) be an entity approved to provide supported living services under this article; or
- (2) complete the requirements set out in 460 IAC 7-4-1(c).

(b) For an entity to be approved to provide person centered planning facilitation services, an entity shall certify that, if approved, the entity will provide person centered planning facilitation services using only persons who meet the qualifications set out in 460 IAC 7-4-5.1(c). *(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 6-5-36; filed Aug 29, 2003, 10:30 a.m.: 27 IR 106)*

Rule 6. Application and Approval Process

460 IAC 6-6-1 Applicability

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-11-1.1-9; IC 12-11-2.1-12
Affected: IC 12-11-1.1; IC 12-11-2.1

Sec. 1. This rule applies to all supported living services and supports. *(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 6-6-1; filed Nov 4, 2002, 12:04 p.m.: 26 IR 761)*

460 IAC 6-6-2 Initial application

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-11-1.1-9; IC 12-11-2.1-12
Affected: IC 12-11-1.1; IC 12-11-2.1

Sec. 2. To receive initial approval as a supported living services or supports provider, an applicant shall submit the following for each supported living service or support for which the applicant is seeking to be an approved provider:

- (1) An application on a form prescribed by the BDDS.
- (2) Evidence that the provider meets the qualifications for each supported living service or support that the provider is seeking to be approved to provide as specified in this article.
- (3) Supporting documents specified on the application form to demonstrate the applicant's programmatic, financial and managerial ability to provide supported living services or supports as set out in this article.
- (4) A written and signed statement that the applicant will comply with the provisions of this article.
- (5) A written and signed statement that the applicant will provide services to an individual as set out in the individual's CCB, ICLB, and ISP.

(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 6-6-2; filed Nov 4, 2002, 12:04 p.m.: 26 IR 761; filed Aug 29, 2003, 10:30 a.m.: 27 IR 106)

460 IAC 6-6-3 Action on application

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-11-1.1-9; IC 12-11-2.1-12
Affected: IC 4-21.5; IC 12-11-1.1; IC 12-11-2.1

Sec. 3. (a) The BDDS shall determine whether an applicant meets the requirements under this article.

(b) Upon review of an initial application, the BDDS shall either:

- (1) approve the applicant for a period not to exceed (3) years; or
- (2) deny approval to an applicant that does not meet the approval requirements of this article.

(c) If an applicant is seeking to obtain approval as a Level 2 clinician pursuant to 460 IAC 6-5-4(c)(1)(E), the BDDS behavior management committee shall review the applicant's credentials.

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

(e) If an applicant is adversely affected or aggrieved by the BDDS's determination, the applicant may request administrative review of the determination. Such request shall be made in writing and filed with the director of the division within fifteen (15) days after the applicant receives written notice of the BDDS's determination. Administrative review shall be conducted pursuant to IC 4-21.5. *(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 6-6-3; filed Nov 4, 2002, 12:04 p.m.: 26 IR 762; filed Aug 29, 2003, 10:30 a.m.: 27 IR 107)*

460 IAC 6-6-4 Additional approvals; community residential facilities council

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-11-1.1-9; IC 12-11-2.1-12
Affected: IC 12-11-1.1; IC 12-11-2.1; IC 12-28-5-11

Sec. 4. Before beginning to provide supported living services or supports under this article, a provider shall also be approved by the community residential facilities council pursuant to IC 12-28-5-11. *(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 6-6-4; filed Nov 4, 2002, 12:04 p.m.: 26 IR 762)*

460 IAC 6-6-5 Renewal of approval

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-11-1.1-9; IC 12-11-2.1-12
Affected: IC 4-21.5; IC 12-11-1.1; IC 12-11-2.1

Sec. 5. (a) A provider of supported living services or supports shall file a written request for renewal of the BDDS's approval at least ninety (90) days prior to expiration of the BDDS's previous approval.

(b) Upon receiving a request for renewal of approved status, the BDDS shall determine whether a provider continues to meet

the requirements of this article.

(c) The BDDS's determination on renewal of approval shall be based on verification that:

(1) the provider's operations have been surveyed either:

(A) within the preceding twelve (12) months; or

(B) as part of the renewal process; and

(2) there are no outstanding issues that seriously endanger the health or safety of an individual receiving services from the provider.

(d) In considering a request for the renewal of approval, the BDDS shall either:

(1) approve the applicant for a period not to exceed three (3) years; or

(2) deny approval to an applicant that does not meet the approval requirements of this article.

(e) The BDDS shall notify a provider in writing of the BDDS's determination at least thirty (30) days prior to the expiration of the provider's approval under this section.

(f) If a provider has complied with subsection (a) and if the BDDS does not act upon a provider's request for renewal of approved status before the expiration of the provider's approved status, the provider's approved status shall continue until such time as the BDDS acts upon the provider's request for renewal of approved status.

(g) If a provider is adversely affected or aggrieved by the BDDS's determination, the provider may request administrative review of the determination. The request shall be made in writing and filed with the director of the division within fifteen (15) days after the provider receives written notice of the determination. Administrative review shall be conducted pursuant to IC 4-21.5. (*Division of Disability, Aging, and Rehabilitative Services; 460 IAC 6-6-5; filed Nov 4, 2002, 12:04 p.m.: 26 IR 762*)

460 IAC 6-6-6 Application to provide additional services

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-11-1.1-9; IC 12-11-2.1-12

Affected: IC 12-11-1.1; IC 12-11-2.1

Sec. 6. (a) A provider seeking approval to provide an additional supported living service or support shall comply with section 2 of this rule.

(b) Approval to provide additional supported living services or supports shall be granted by the BDDS only if:

(1) the provider's operations have been surveyed either:

(A) within the preceding twelve (12) months; or

(B) as part of the approval process to provide additional services; and

(2) there are no outstanding issues that seriously endanger the health or safety of an individual.

(*Division of Disability, Aging, and Rehabilitative Services; 460 IAC 6-6-6; filed Nov 4, 2002, 12:04 p.m.: 26 IR 762*)

Rule 7. Monitoring; Sanctions; Administrative Review

460 IAC 6-7-1 Applicability

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-11-1.1-9; IC 12-11-2.1-12

Affected: IC 12-11-1.1; IC 12-11-2.1

Sec. 1. This rule applies to all supported living services and supports. (*Division of Disability, Aging, and Rehabilitative Services; 460 IAC 6-7-1; filed Nov 4, 2002, 12:04 p.m.: 26 IR 762*)

460 IAC 6-7-2 Monitoring; corrective action

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-11-1.1-9; IC 12-11-2.1-12

Affected: IC 12-11-1.1; IC 12-11-2.1

Sec. 2. (a) The BDDS shall monitor compliance with the requirements of this article at the following times:

(1) At least annually.

(2) Upon receiving a complaint or report alleging a provider's noncompliance with the requirements of this article.

(b) The BDDS shall monitor compliance with the requirements of this article through any of the following means:

- (1) Requesting and obtaining information from the provider.
- (2) Site inspections.
- (3) Meeting with an individual or the individual's legal representative as applicable.
- (4) Review of provider records and the records of an individual.
- (5) Follow-up inspection as is reasonably necessary to determine compliance after the BDDS has requested a corrective action plan.
- (c) After any site inspection, the BDDS shall issue a written report. The report shall:
 - (1) be prepared by the BDDS or its designee;
 - (2) document the findings made during monitoring;
 - (3) identify necessary corrective action;
 - (4) identify the time period in which a corrective action plan shall be submitted to the BDDS or its designee and the time period in which a corrective action plan is to be completely implemented by the provider;
 - (5) identify any documentation needed from the provider to support the provider's completion of the corrective action plan; and
 - (6) be submitted to the provider.
- (d) A provider shall:
 - (1) submit a corrective plan of action to the BDDS or its designee within the time frame identified by the BDDS or its designee;
 - (2) complete and implement a corrective action plan to the reasonable satisfaction of the BDDS or its designee within the time period identified by the BDDS, or within such longer time period agreed to by the BDDS or its designee and the provider;
 - (3) notify the BDDS or its designee upon the completion of a corrective action plan; and
 - (4) provide the BDDS or its designee with any requested documentation.
- (e) If a complaint is filed by a person other than an individual receiving services, BDDS or its designee shall notify the person

filing the complaint of the following:

- (1) The completion of the BDDS's monitoring as a result of the complaint.
- (2) The completion of any corrective action by the provider as a result of the BDDS' monitoring of a provider.

(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 6-7-2; filed Nov 4, 2002, 12:04 p.m.: 26 IR 763; filed Aug 29, 2003, 10:30 a.m.: 27 IR 107)

460 IAC 6-7-3 Effect of noncompliance; notice

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-11-1.1-9; IC 12-11-2.1-12

Affected: IC 4-21.5; IC 12-11-1.1; IC 12-11-2.1

Sec. 3. (a) If a provider does not comply with the requirements of this article and does not complete a corrective action plan to the reasonable satisfaction of the BDDS or its designee within the time allowed, the BDDS shall not authorize:

- (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 the BDDS or its designee; or
- (3) both.

(b) After an acceptable corrective plan of action has been submitted to the BDDS, the BDDS shall monitor the provider's compliance with the corrective action plan. If the BDDS determines that the provider has not implemented the corrective plan of action, the BDDS shall not authorize:

- (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 submit a corrective action plan to the reasonable satisfaction of the BDDS or its designee; or
- (3) both.

(c) The BDDS shall give written notice of the BDDS's action under subsection (a) or (b) to:

- (1) the provider;
- (2) the individual receiving service from the provider; and
- (3) the individual's legal representative if applicable.

- (d) The written notice under subsection (c) 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 the BDDS's 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 the BDDS's action.

(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 6-7-3; filed Nov 4, 2002, 12:04 p.m.: 26 IR 763; filed Aug 29, 2003, 10:30 a.m.: 27 IR 108)

460 IAC 6-7-4 Serious endangerment of individual's health and safety

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-11-1.1-9; IC 12-11-2.1-12

Affected: IC 4-21.5; IC 12-11-1.1; IC 12-11-2.1

Sec. 4. (a) If a provider's noncompliance with this article seriously endangers the health or safety of an individual such that an emergency exists, as determined by the BDDS or its designee, the BDDS may enter an order for any of the following:

- (1) Termination of continued authorization for the provider to serve any individual whose health or safety is being seriously endangered.
- (2) Denial of authorization for the receipt of services by individuals not already receiving services from the provider at the time the BDDS determines that a provider's noncompliance with this article endangers the health or safety of an individual.
- (3) Termination of continued authorization for the provider to provide any services under this article.

(b) Any action taken pursuant to subsection (a) shall remain in effect until such time as the BDDS or its designee determines that the provider's noncompliance with this article is no longer endangering the health and safety of an individual.

(c) The BDDS shall give written notice of an order under subsection (a) to:

- (1) the provider;
- (2) the individual receiving service from the provider; and
- (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 the BDDS's 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 the BDDS's action.

(e) The order issued under subsection (a) shall expire:

- (1) on the date the BDDS determines that an emergency no longer exists; or
- (2) in ninety (90) days;

whichever is less.

(f) During the pendency of any related proceedings under IC 4-21.5, the BDDS may renew an emergency order for successive ninety (90) day periods. *(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 6-7-4; filed Nov 4, 2002, 12:04 p.m.: 26 IR 764)*

460 IAC 6-7-5 Revocation of approval

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-11-1.1-9; IC 12-11-2.1-12

Affected: IC 12-11-1.1; IC 12-11-2.1

Sec. 5. The BDDS shall revoke the approval of a provider under this rule for 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 seriously endangers the health or safety of an individual.

(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 6-7-5; filed Nov 4, 2002, 12:04 p.m.: 26 IR 764)

460 IAC 6-7-6 Administrative review

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-11-1.1-9; IC 12-11-2.1-12
Affected: IC 4-21.5; IC 12-11-1.1; IC 12-11-2.1

Sec. 6. (a) To qualify for administrative review of an action or determination of the BDDS under this rule, a provider shall file a written petition for review that does the following:

- (1) States facts demonstrating that the provider is:
 - (A) a provider to whom the action is specifically directed;
 - (B) aggrieved or adversely affected by the action; or
 - (C) entitled to review under any law.

- (2) Is filed with the director of the division of disability, aging, and rehabilitative services within fifteen (15) days after the provider receives notice of the agency action or determination.

(b) Administrative review shall be conducted in accordance with IC 4-21.5. (*Division of Disability, Aging, and Rehabilitative Services; 460 IAC 6-7-6; filed Nov 4, 2002, 12:04 p.m.: 26 IR 764*)

Rule 8. Rights of Individuals

460 IAC 6-8-1 Applicability

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-11-1.1-9; IC 12-11-2.1-12
Affected: IC 12-11-1.1; IC 12-11-2.1

Sec. 1. This rule applies to all supported living services and supports. (*Division of Disability, Aging, and Rehabilitative Services; 460 IAC 6-8-1; filed Nov 4, 2002, 12:04 p.m.: 26 IR 764*)

460 IAC 6-8-2 Constitutional and statutory rights

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-11-1.1-9; IC 12-11-2.1-12
Affected: IC 12-11-1.1; IC 12-11-2.1; IC 12-27

Sec. 2. (a) A provider shall ensure that an individual's rights as guaranteed by the Constitution of the United States and the Constitution of Indiana are not infringed upon.

- (b) A provider shall ensure that:
- (1) an individual's rights as set out in IC 12-27 are not infringed upon; and
 - (2) an individual has the ability to exercise those rights as provided in IC 12-27.

(*Division of Disability, Aging, and Rehabilitative Services; 460 IAC 6-8-2; filed Nov 4, 2002, 12:04 p.m.: 26 IR 764*)

460 IAC 6-8-3 Promoting the exercise of rights

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-11-1.1-9; IC 12-11-2.1-12
Affected: IC 12-11-1.1; IC 12-11-2.1

Sec. 3. To protect an individual's rights and enable an individual to exercise the individual's rights, a provider shall do the following:

- (1) Provide an individual with humane care and protection from harm.
- (2) Provide services that:
 - (A) are meaningful and appropriate; and
 - (B) comply with:
 - (i) standards of professional practice;
 - (ii) guidelines established by accredited professional organizations if applicable; and
 - (iii) budgetary constraints;

in a safe, secure, and supportive environment.

- (3) Obtain written consent from an individual, or the individual's legal representative, if applicable, before releasing

information from the individual's records unless the person requesting release of the records is authorized by law to receive the records without consent.

(4) Process and make decisions regarding complaints filed by an individual within two (2) weeks after the provider receives the complaint.

(5) Inform an individual, in writing and in the individual's usual mode of communication, of:

(A) the individual's constitutional and statutory rights using a form approved by the BDDS; and

(B) the complaint procedure established by the provider for processing complaints.

(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 6-8-3; filed Nov 4, 2002, 12:04 p.m.: 26 IR 765)

Rule 9. Protection of an Individual

460 IAC 6-9-1 Applicability

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-11-1.1-9; IC 12-11-2.1-12

Affected: IC 12-11-1.1; IC 12-11-2.1

Sec. 1. This rule applies to all supported living services and supports. *(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 6-9-1; filed Nov 4, 2002, 12:04 p.m.: 26 IR 765)*

460 IAC 6-9-2 Adoption of policies and procedures to protect individuals

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-11-1.1-9; IC 12-11-2.1-12

Affected: IC 12-11-1.1; IC 12-11-2.1

Sec. 2. (a) A provider shall adopt written policies and procedures regarding the requirements of sections 3 and 4 of this rule.

(b) A provider shall require the provider's employees or agents to be familiar with and comply with the policies and procedures required by subsection (a).

(c) Beginning on the date services for an individual commence and at least one (1) time a year thereafter, a provider shall inform:

(1) the individual, in writing and in the individual's usual mode of communication;

(2) the individual's parent, if the individual is less than eighteen (18) years of age, or if the individual's parent is the individual's legal representative; and

(3) the individual's legal representative if applicable;

of the policies and procedures adopted pursuant to this section. *(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 6-9-2; filed Nov 4, 2002, 12:04 p.m.: 26 IR 765)*

460 IAC 6-9-3 Prohibiting violations of individual rights

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-11-1.1-9; IC 12-11-2.1-12

Affected: IC 12-11-1.1; IC 12-11-2.1

Sec. 3. (a) A provider shall not:

(1) abuse, neglect, exploit, or mistreat an individual; or

(2) violate an individual's rights.

(b) A provider who delivers services through employees or agents shall adopt policies and procedures that prohibit:

(1) abuse, neglect, exploitation, or mistreatment of an individual; or

(2) violation of an individual's rights.

(c) Practices prohibited under this section include the following:

(1) Corporal punishment inflicted by the application of painful stimuli to the body, which includes:

(A) forced physical activity;

(B) hitting;

(C) pinching;

(D) the application of painful or noxious stimuli;

- (E) the use of electric shock; or
- (F) the infliction of physical pain.
- (2) Seclusion by placing an individual alone in a room or other area from which exit is prevented.
- (3) Verbal abuse, including screaming, swearing, name-calling, belittling, or other verbal activity that may cause damage to an individual's self-respect or dignity.
- (4) A practice that denies an individual any of the following without a physician's order:
 - (A) Sleep.
 - (B) Shelter.
 - (C) Food.
 - (D) Drink.
 - (E) Physical movement for prolonged periods of time.
 - (F) Medical care or treatment.
 - (G) Use of bathroom facilities.
- (5) Work or chores benefiting [*sic.*, *benefitting*] others without pay unless:
 - (A) the provider has obtained a certificate from the United States Department of Labor authorizing the employment of workers with a disability at special minimum wage rates;
 - (B) the services are being performed by an individual in the individual's own residence as a normal and customary part of housekeeping and maintenance duties; or
 - (C) an individual desires to perform volunteer work in the community.

(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 6-9-3; filed Nov 4, 2002, 12:04 p.m.: 26 IR 765)

460 IAC 6-9-4 Systems for protecting individuals

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-11-1.1-9; IC 12-11-2.1-12

Affected: IC 12-11-1.1; IC 12-11-2.1

Sec. 4. (a) Except as specified in this section, this section applies to all providers of supported living services and supports.

(b) A provider shall require that at regular intervals, as specified by the individual's ISP, the individual be informed of the following:

- (1) The individual's medical condition.
- (2) The individual's developmental and behavioral status.
- (3) The risks of treatment.
- (4) The individual's right to refuse treatment.
- (c) Except for providers of:
 - (1) occupational therapy services;
 - (2) physical therapy services;
 - (3) music therapy services; and
 - (4) speech-language therapy services;

a provider shall establish a protocol for ensuring that an individual is free from unnecessary medications and physical restraints.

- (d) Except for providers of:
 - (1) occupational therapy services;
 - (2) physical therapy services;
 - (3) music therapy services; and
 - (4) speech-language therapy services;

a provider shall establish a system to reduce an individual's dependence on medications and physical restraints.

- (e) A provider shall establish a system to ensure that an individual has the opportunity for personal privacy.
- (f) A provider shall establish a system to:
 - (1) ensure that an individual is not compelled to perform services for a provider; and
 - (2) provide that, if an individual works voluntarily for a provider, the individual is compensated:
 - (A) at the prevailing wage for the job; and
 - (B) commensurate with the individual's abilities;

unless the provisions of section 3(c)(5) of this rule are met.

(g) A provider shall establish a system that ensures that an individual has:

- (1) the opportunity to communicate, associate, and meet privately with persons of the individual's choosing;
- (2) the means to send and receive unopened mail; and
- (3) access to a telephone with privacy for incoming and outgoing local and long distance calls at the individual's expense.

(h) A provider shall establish a system for providing an individual with the opportunity to participate in social, religious, and community activities.

(i) A provider shall establish a system that ensures that an individual has the right to retain and use appropriate personal possessions and clothing.

(j) A provider shall establish a system for protecting an individual's funds and property from misuse or misappropriation.

(k) A provider shall establish a protocol specifying the responsibilities of the provider for:

- (1) conducting an investigation; or
- (2) participating in an investigation;

of an alleged violation of an individual's rights or a reportable incident. The system shall include taking all immediate necessary steps to protect an individual who has been the victim of abuse, neglect, exploitation, or mistreatment from further abuse, neglect, exploitation, or mistreatment.

(l) A provider shall establish a system providing for:

- (1) administrative action against;
- (2) disciplinary action against; and
- (3) dismissal of;

an employee or agent of the provider, if the employee or agent is involved in the abuse, neglect, exploitation, or mistreatment of an individual or a violation of an individual's rights.

(m) A provider 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.

(n) A provider shall establish a written procedure for the provider or for an employee or agent of the provider for informing:

- (1) adult protective services or child protection services, as applicable;
- (2) an individual's legal representative, if applicable;
- (3) any person designated by the individual; and
- (4) the provider of case management services to the individual;

of a situation involving the abuse, neglect, exploitation, mistreatment of an individual, or the violation of an individual's rights.

(o) A provider shall establish a written protocol for reporting reportable incidents to the BDDS as required by section 5 of this rule. (*Division of Disability, Aging, and Rehabilitative Services; 460 IAC 6-9-4; filed Nov 4, 2002, 12:04 p.m.: 26 IR 766*)

460 IAC 6-9-5 Incident reporting

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-11-1.1-9; IC 12-11-2.1-12

Affected: IC 12-11-1.1; IC 12-11-2.1

Sec. 5. (a) An incident described as follows shall be reported to the BDDS on the incident report form prescribed by the BDDS:

(1) Alleged, suspected, or actual abuse, neglect, or exploitation of an individual. An incident in this category shall also be reported to adult protective services or child protection services as applicable. The provider shall suspend staff involved in an incident from duty pending investigation by the provider.

(2) Death of an individual. A death shall also be reported to adult protective services or child protection services as applicable. A death shall also be reported to the BDDS's central office in Indianapolis not later than twenty-four (24) hours after the death.

(3) A service delivery site that compromises the health and safety of an individual while the individual is receiving services from the following causes:

(A) A significant interruption of a major utility, such as electricity, heat, water, air conditioning, plumbing, fire alarm, or sprinkler system.

(B) Environmental or structural problems associated with a habitable site that compromise the health and safety of an

individual, including:

- (i) inappropriate sanitation;
 - (ii) serious lack of cleanliness;
 - (iii) rodent or insect infestation;
 - (iv) structural damage; or
 - (v) damage caused by flooding, tornado, or other acts of nature.
- (4) Fire resulting in relocation, personal injury, property loss, or other health and safety concerns to or for an individual receiving services.
- (5) Elopement of an individual.
- (6) Suspected or actual criminal activity by:
- (A) a staff member, employee, or agent of a provider; or
 - (B) an individual receiving services.
- (7) An event with the potential for causing significant harm or injury and requiring medical or psychiatric treatments or services to or for an individual receiving services.
- (8) Admission of an individual to a nursing facility, including respite stays.
- (9) Injury to an individual when the origin or cause of the injury is unknown.
- (10) A significant injury to an individual, including:
- (A) a fracture;
 - (B) a burn greater than first degree;
 - (C) choking that requires intervention; or
 - (D) contusions or lacerations.
- (11) An injury that occurs while an individual is restrained.
- (12) A medication error, except for refusal to take medications, that jeopardizes an individual's health and safety, as determined by the individual's personal physician, including the following:
- (A) Medication given that was not prescribed or ordered for the individual.
 - (B) Failure to administer medication as prescribed, including:
 - (i) incorrect dosage;
 - (ii) missed medication; and
 - (iii) failure to give medication at the appropriate time.
- (13) Inadequate staff support for an individual, including inadequate supervision, with the potential for:
- (A) significant harm or injury to an individual; or
 - (B) death of an individual.
- (14) Inadequate medical support for an individual, including failure to obtain:
- (A) necessary medical services;
 - (B) routine dental or physician services; or
 - (C) medication timely resulting in missed medications.
- (15) Use of any PRN medication related to an individual's behavior. An incident report related to the use of PRN medication related to an individual's behavior must include the following information:
- (A) The length of time of the individual's behavior that resulted in the use of the PRN medication related to the individual's behavior.
 - (B) A description of what precipitated the behavior resulting in the use of PRN medication related to the individual's behavior.
 - (C) A description of the steps that were taken prior to the use of the PRN medication to avoid the use of a PRN medication related to the individual's behavior.
 - (D) If a PRN medication was used before a medical or dental appointment, a description of the desensitization plan in place to lessen the need for a PRN medication for a medical or dental appointment.
 - (E) The criteria the provider has in place for use of a PRN medication related to an individual's behavior.
 - (F) A description of the provider's PRN medication protocol related to an individual's behavior, including the provider's:
 - (i) notification process regarding the use of a PRN medication related to an individual's behavior; and

(ii) approval process for the use of a PRN medication related to an individual's behavior.

(G) The name and title of the staff approving the use of the PRN medication related to the individual's behavior.

(H) The medication and dosage that was approved for the PRN medication related to the individual's behavior.

(I) The date and time of any previous PRN medication given to the individual related to the individual's behavior based on current records.

(b) An incident described in subsection (a) shall be reported by a provider or an employee or agent 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.

(c) An initial report regarding an incident shall be submitted within twenty-four (24) hours of:

(1) the occurrence of the incident; or

(2) the reporter becoming aware of or receiving information about an incident.

(d) The provider providing case management services to an individual shall submit a follow-up report concerning the incident on the BDDS's follow-up incident report form 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 resolved.

(e) All information required to be submitted to the BDDS shall also be submitted to the provider of case management services to the individual. (*Division of Disability, Aging, and Rehabilitative Services; 460 IAC 6-9-5; filed Nov 4, 2002, 12:04 p.m.: 26 IR 767; filed Aug 29, 2003, 10:30 a.m.: 27 IR 108*)

460 IAC 6-9-6 Transfer of individual's records upon change of provider

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-11-1.1-9; IC 12-11-2.1-12

Affected: IC 12-11-1.1; IC 12-11-2.1

Sec. 6. (a) If an individual changes providers for any supported living service or support, the new provider shall:

(1) discuss with the individual the new provider's need to obtain a copy of the previous provider's records and files concerning the individual;

(2) provide the individual with a written form used to authorize the previous provider's release of a copy of the records and files concerning the individual to the new provider; and

(3) request the individual to sign the release form.

(b) Upon receipt of a written release signed by the individual, a provider shall forward a copy of all of the individual's records and files to the new provider no later than seven (7) days after receipt of the written release signed by the individual. (*Division of Disability, Aging, and Rehabilitative Services; 460 IAC 6-9-6; filed Nov 4, 2002, 12:04 p.m.: 26 IR 768*)

460 IAC 6-9-7 Notice of termination of services

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-11-1.1-9; IC 12-11-2.1-12

Affected: IC 12-11-1.1; IC 12-11-2.1

Sec. 7. (a) A provider shall give an individual and an individual's representative at least sixty (60) days' written notice before terminating the individual's services if the services being provided to the individual are of an ongoing nature.

(b) If the provider is providing any services to the individual, besides case management services, before terminating services the provider shall:

(1) participate in the development of a new or updated ISP prior to terminating services; and

(2) continue providing services to the individual until a new provider providing similar services is in place.

(c) If the provider is providing case management services to the individual, before terminating services the provider shall:

(1) participate in a team meeting in which the individual's new provider providing case management provider is present; and

(2) coordinate the transfer of case management services to the new provider providing case management services.

(*Division of Disability, Aging, and Rehabilitative Services; 460 IAC 6-9-7; filed Aug 29, 2003, 10:30 a.m.: 27 IR 109*)

Rule 10. General Administrative Requirements for Providers

460 IAC 6-10-1 Applicability

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-11-1.1-9; IC 12-11-2.1-12
Affected: IC 12-11-1.1; IC 12-11-2.1

Sec. 1. This rule applies to all supported living services and supports. (*Division of Disability, Aging, and Rehabilitative Services; 460 IAC 6-10-1; filed Nov 4, 2002, 12:04 p.m.: 26 IR 768*)

460 IAC 6-10-2 Documentation of approvals

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-11-1.1-9; IC 12-11-2.1-12
Affected: IC 12-11-1.1; IC 12-11-2.1

Sec. 2. A provider shall maintain documentation that the BDDS has approved the provider for each service provided. (*Division of Disability, Aging, and Rehabilitative Services; 460 IAC 6-10-2; filed Nov 4, 2002, 12:04 p.m.: 26 IR 768*)

460 IAC 6-10-3 Compliance with laws

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-11-1.1-9; IC 12-11-2.1-12
Affected: IC 12-11-1.1; IC 12-11-2.1

Sec. 3. A provider shall comply with all applicable state and federal statutes, rules, regulations, and requirements, including all applicable provisions of the federal Americans with Disabilities Act (ADA), 42 U.S.C. 12001 et seq. (*Division of Disability, Aging, and Rehabilitative Services; 460 IAC 6-10-3; filed Nov 4, 2002, 12:04 p.m.: 26 IR 768*)

460 IAC 6-10-4 Compliance with state Medicaid plan; Medicaid waivers

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-11-1.1-9; IC 12-11-2.1-12
Affected: IC 12-11-1.1; IC 12-11-2.1

Sec. 4. A provider shall comply with the provisions of:

- (1) the state Medicaid plan; and
- (2) any Medicaid waiver applicable to the provider's services.

(*Division of Disability, Aging, and Rehabilitative Services; 460 IAC 6-10-4; filed Nov 4, 2002, 12:04 p.m.: 26 IR 768*)

460 IAC 6-10-5 Documentation of criminal histories

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-11-1.1-9; IC 12-11-2.1-12
Affected: IC 12-11-1.1; IC 12-11-2.1; IC 16-27-2-5; IC 31-33-22-1; IC 35-42-1; IC 35-42-4; IC 35-43-4; IC 35-46-1-12; IC 35-46-1-13

Sec. 5. (a) A provider shall obtain a limited criminal history from the Indiana central repository for criminal history information from each employee, officer, or agent involved in the management, administration, or provision of services.

(b) The limited criminal history shall verify that the employee, officer, or agent has not been convicted of the following:

- (1) A sex crime (IC 35-42-4).
- (2) Exploitation of an endangered adult (IC 35-46-1-12).
- (3) Failure to report:
 - (A) battery, neglect, or exploitation of an endangered adult (IC 35-46-1-13); or
 - (B) abuse or neglect of a child (IC 31-33-22-1).
- (4) Theft (IC 35-43-4), if the person's conviction for theft occurred less than ten (10) years before the person's employment application date, except as provided in IC 16-27-2-5(a)(5).
- (5) Murder (IC 35-42-1-1).
- (6) Voluntary manslaughter (IC 35-42-1-3).
- (7) Involuntary manslaughter (IC 35-42-1-4).
- (8) Felony battery.

(9) A felony offense relating to a controlled substance.

(c) A provider shall also obtain a criminal history check from each county in which an employee, officer, or agent involved in the management, administration, or provision of services has resided during the three (3) years before the criminal history check is requested from the county.

(d) A provider shall have a report from the state nurse aid registry of the Indiana state department of health verifying that each direct care staff has not had a finding entered into the state nurse aide registry. (*Division of Disability, Aging, and Rehabilitative Services; 460 IAC 6-10-5; filed Nov 4, 2002, 12:04 p.m.: 26 IR 768; filed Aug 29, 2003, 10:30 a.m.: 27 IR 110*)

460 IAC 6-10-6 Provider organizational chart

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-11-1.1-9; IC 12-11-2.1-12

Affected: IC 12-11-1.1; IC 12-11-2.1

Sec. 6. (a) A provider shall maintain a current organizational chart, including parent organizations and subsidiary organizations.

(b) Upon request, a provider shall supply the BDDS with a copy of the chart described in subsection (a). (*Division of Disability, Aging, and Rehabilitative Services; 460 IAC 6-10-6; filed Nov 4, 2002, 12:04 p.m.: 26 IR 768*)

460 IAC 6-10-7 Collaboration and quality control

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-11-1.1-9; IC 12-11-2.1-12

Affected: IC 12-11-1.1; IC 12-11-2.1

Sec. 7. (a) A provider for an individual shall collaborate with the individual's other service providers to provide services to the individual consistent with the individual's ISP.

(b) A provider for an individual shall give the individual's provider of case management services access to the provider's quality assurance and quality improvement procedures.

(c) If a provider administers medication to an individual, the provider for the individual shall implement the medication administration system designed by the individual's provider responsible for medication administration.

(d) If applicable, a provider for an individual shall implement the seizure management system designed by the individual's provider responsible for seizure management.

(e) If applicable, a provider for an individual shall implement the health-related incident management system designed by the individual's provider responsible for health-related incident management.

(f) If applicable, a provider for an individual shall implement the behavioral support plan designed by the individual's provider of behavioral support services.

(g) If an individual dies, a provider shall cooperate with the provider responsible for conducting an investigation into the individual's death pursuant to 460 IAC 6-25-9. (*Division of Disability, Aging, and Rehabilitative Services; 460 IAC 6-10-7; filed Nov 4, 2002, 12:04 p.m.: 26 IR 769*)

460 IAC 6-10-8 Resolution of disputes

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-11-1.1-9; IC 12-11-2.1-12

Affected: IC 4-21.5; IC 12-11-1.1; IC 12-11-2.1

Sec. 8. (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 shall attempt to resolve the dispute informally through an exchange of information and possible resolution.

(d) If the parties are not able to resolve the dispute within fifteen (15) days:

(1) each party shall document:

(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 the individual's support team for resolution.
- (e) The parties shall abide by the decision of the individual's support team.
- (f) If an individual's support team cannot resolve the matter within fifteen (15) days after the dispute is referred to the individual's support team, then the parties shall refer the matter to the individual's service coordinator for resolution of the dispute.
- (g) The service coordinator shall make a decision within fifteen (15) days after the dispute is referred to the service coordinator and give the parties notice of the service coordinator's decision pursuant to IC 4-21.5.
- (h) Any party adversely affected or aggrieved by the service coordinator's decision may request administrative review of the service coordinator's decision within fifteen (15) days after the party receives written notice of the service coordinator's decision.
- (i) Administrative review shall be conducted pursuant to IC 4-21.5. (*Division of Disability, Aging, and Rehabilitative Services; 460 IAC 6-10-8; filed Nov 4, 2002, 12:04 p.m.: 26 IR 769; filed Aug 29, 2003, 10:30 a.m.: 27 IR 110*)

460 IAC 6-10-9 Automation standards

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-11-1.1-9; IC 12-11-2.1-12
Affected: IC 12-11-1.1; IC 12-11-2.1

Sec. 9. A provider shall comply with all automation standards and requirements prescribed by the applicable funding agency concerning documentation and processing of services provided under this article. (*Division of Disability, Aging, and Rehabilitative Services; 460 IAC 6-10-9; filed Nov 4, 2002, 12:04 p.m.: 26 IR 769*)

460 IAC 6-10-10 Quality assurance and quality improvement system

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-11-1.1-9; IC 12-11-2.1-12
Affected: IC 12-11-1.1; IC 12-11-2.1

- Sec. 10. (a) A provider shall have an internal quality assurance and quality improvement system that is:
- (1) focused on the individual; and
 - (2) appropriate for the services being provided.
 - (b) The system described in subsection (a) shall include at least the following elements:
 - (1) An annual survey of individual satisfaction.
 - (2) Records of the findings of annual individual satisfaction surveys.
 - (3) Documentation of efforts to improve service delivery in response to the survey of individual satisfaction.
 - (4) An assessment of the appropriateness and effectiveness of each service provided to an individual.
 - (5) A process for:
 - (A) analyzing data concerning reportable incidents;
 - (B) developing recommendations to reduce the risk of future incidents; and
 - (C) reviewing recommendations to assess their effectiveness.
 - (6) If medication is administered to an individual by a provider, a process for:
 - (A) analyzing medication errors;
 - (B) developing recommendations to reduce the risk of future medication errors; and
 - (C) reviewing the recommendations to assess their effectiveness.
 - (7) If behavioral support services are provided by a provider, a process for:
 - (A) analyzing the appropriateness and effectiveness of behavioral support techniques used for an individual;
 - (B) developing recommendations concerning the behavioral support techniques used with an individual; and
 - (C) reviewing the recommendations to assess their effectiveness.
 - (8) If community habilitation and participation services or residential habilitation and support services are provided by the provider, a process for:
 - (A) analyzing the appropriateness and effectiveness of the instructional techniques used with an individual;
 - (B) developing recommendations concerning the instructional techniques used for an individual; and
 - (C) reviewing the recommendations to assess their effectiveness.

(*Division of Disability, Aging, and Rehabilitative Services; 460 IAC 6-10-10; filed Nov 4, 2002, 12:04 p.m.: 26 IR 769*)

460 IAC 6-10-11 Prohibition against office in residence of individual

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-11-1.1-9; IC 12-11-2.1-12
Affected: IC 12-11-1.1; IC 12-11-2.1

Sec. 11. A provider shall not:

- (1) maintain an office in an individual's residence from which the individual is excluded from entering or from using any or all equipment contained in the office; or
- (2) conduct the provider's business operations not related to services to the individual in the individual's residence.

(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 6-10-11; filed Nov 4, 2002, 12:04 p.m.: 26 IR 770)

460 IAC 6-10-12 Human rights committee

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-11-1.1-9; IC 12-11-2.1-12
Affected: IC 12-11-1.1; IC 12-11-2.1

Sec. 12. Beginning July 1, 2004, a provider shall cooperate with the division's or the BDDS's regional human rights committee for the geographic area or areas in which the provider is providing services under this article. *(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 6-10-12; filed Nov 4, 2002, 12:04 p.m.: 26 IR 770)*

460 IAC 6-10-13 Emergency behavioral support

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-11-1.1-9; IC 12-11-2.1-12
Affected: IC 12-11-1.1; IC 12-11-2.1

Sec. 13. (a) In an emergency, chemical restraint, physical restraint, or removal of an individual from the individual's environment may be used:

- (1) without the necessity of a behavioral support plan; and
- (2) only to prevent significant harm to the individual or others.

(b) The individual's support team shall meet not later than five (5) working days after an emergency chemical restraint, physical restraint, or removal of an individual from the environment in order to:

- (1) review the circumstances of the emergency chemical restraint, physical restraint, or removal of an individual;
- (2) determine the need for a:
 - (A) functional analysis;
 - (B) behavioral support plan; or
 - (C) both; and
- (3) document recommendations.

(c) If a provider of behavioral support services is not a member an individual's support team, a provider of behavioral support services must be added to the individual's support team.

(d) Based on the recommendation of the support team, a provider of behavioral support services shall:

- (1) complete a functional analysis within thirty (30) days; and
- (2) make appropriate recommendations to the support team.

(e) The individual's support team shall:

- (1) document the recommendations of the behavioral support services provider; and
- (2) design an accountability system to ensure implementation of the recommendations.

(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 6-10-13; filed Nov 4, 2002, 12:04 p.m.: 26 IR 770; filed Aug 29, 2003, 10:30 a.m.: 27 IR 110)

Rule 11. Financial Status of Providers

460 IAC 6-11-1 Applicability

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-11-1.1-9; IC 12-11-2.1-12
Affected: IC 12-11-1.1; IC 12-11-2.1

Sec. 1. This rule applies to all supported living services and supports. (*Division of Disability, Aging, and Rehabilitative Services; 460 IAC 6-11-1; filed Nov 4, 2002, 12:04 p.m.: 26 IR 770*)

460 IAC 6-11-2 Disclosure of financial information

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-11-1.1-9; IC 12-11-2.1-12
Affected: IC 12-11-1.1; IC 12-11-2.1

Sec. 2. (a) A provider shall maintain and, upon the BDDS's request, shall make available to the BDDS the following information concerning the provider:

- (1) Financial status.
 - (2) Current expenses and revenues.
 - (3) Projected budgets outlining future operations.
 - (4) Credit history and the ability to obtain credit.
- (b) A provider shall maintain financial records in accordance with generally accepted accounting and bookkeeping practices.
- (c) The financial status of a provider shall be audited according to state board of accounts requirements and procedures.

(*Division of Disability, Aging, and Rehabilitative Services; 460 IAC 6-11-2; filed Nov 4, 2002, 12:04 p.m.: 26 IR 770*)

460 IAC 6-11-3 Financial stability

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-11-1.1-9; IC 12-11-2.1-12
Affected: IC 12-11-1.1; IC 12-11-2.1

Sec. 3. A provider shall be financially stable, with the documented ability to deliver services without interruption for at least two (2) months without payment for services. (*Division of Disability, Aging, and Rehabilitative Services; 460 IAC 6-11-3; filed Nov 4, 2002, 12:04 p.m.: 26 IR 771*)

Rule 12. Insurance

460 IAC 6-12-1 Applicability

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-11-1.1-9; IC 12-11-2.1-12
Affected: IC 12-11-1.1; IC 12-11-2.1

Sec. 1. This rule applies to all supported living services and supports. (*Division of Disability, Aging, and Rehabilitative Services; 460 IAC 6-12-1; filed Nov 4, 2002, 12:04 p.m.: 26 IR 771*)

460 IAC 6-12-2 Property and personal liability insurance

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-11-1.1-9; IC 12-11-2.1-12
Affected: IC 12-11-1.1; IC 12-11-2.1

Sec. 2. A provider shall secure insurance to cover:

- (1) personal injury;
- (2) loss of life; or
- (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 6-12-2; filed Nov 4, 2002, 12:04 p.m.: 26 IR 771*)

Rule 13. Transportation of an Individual

460 IAC 6-13-1 Applicability

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-11-1.1-9; IC 12-11-2.1-12
Affected: IC 12-11-1.1; IC 12-11-2.1

Sec. 1. This rule applies to all supported living services and supports. (*Division of Disability, Aging, and Rehabilitative Services; 460 IAC 6-13-1; filed Nov 4, 2002, 12:04 p.m.: 26 IR 771*)

460 IAC 6-13-2 Transportation of an individual

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-11-1.1-9; IC 12-11-2.1-12

Affected: IC 12-11-1.1; IC 12-11-2.1

Sec. 2. A provider that transports an individual receiving services in a motor vehicle shall:

- (1) maintain the vehicle in good repair;
- (2) properly register with the Indiana bureau of motor vehicles or in the state in which the owner of the vehicle resides; and
- (3) insure the vehicle as required under Indiana law.

(*Division of Disability, Aging, and Rehabilitative Services; 460 IAC 6-13-2; filed Nov 4, 2002, 12:04 p.m.: 26 IR 771; filed Aug 29, 2003, 10:30 a.m.: 27 IR 111*)

Rule 14. Professional Qualifications and Requirements

460 IAC 6-14-1 Applicability

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-11-1.1-9; IC 12-11-2.1-12

Affected: IC 12-11-1.1; IC 12-11-2.1

Sec. 1. This rule applies to all supported living services and supports. (*Division of Disability, Aging, and Rehabilitative Services; 460 IAC 6-14-1; filed Nov 4, 2002, 12:04 p.m.: 26 IR 771*)

460 IAC 6-14-2 Requirement for qualified personnel

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-11-1.1-9; IC 12-11-2.1-12

Affected: IC 12-11-1.1; IC 12-11-2.1

Sec. 2. A provider shall ensure that services provided to an individual:

- (1) meet the needs of the individual;
- (2) conform to the individual's ISP; and
- (3) are provided by qualified personnel as required under this article.

(*Division of Disability, Aging, and Rehabilitative Services; 460 IAC 6-14-2; filed Nov 4, 2002, 12:04 p.m.: 26 IR 771*)

460 IAC 6-14-3 Documentation of qualifications

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-11-1.1-9; IC 12-11-2.1-12

Affected: IC 12-11-1.1; IC 12-11-2.1

Sec. 3. A provider shall maintain documentation that:

- (1) the provider meets the requirements for providing services under this article; and
- (2) the provider's employees or agents meet the requirements for providing services under this article.

(*Division of Disability, Aging, and Rehabilitative Services; 460 IAC 6-14-3; filed Nov 4, 2002, 12:04 p.m.: 26 IR 771*)

460 IAC 6-14-4 Training

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-11-1.1-9; IC 12-11-2.1-12

Affected: IC 12-11-1.1; IC 12-11-2.1

Sec. 4. (a) A provider shall train the provider's employees or agents in the protection of an individual's rights, including how to:

- (1) respect the dignity of an individual;
- (2) protect an individual from abuse, neglect, and exploitation;

- (3) implement person centered planning and an individual's ISP; and
- (4) communicate successfully with an individual.

(b) A provider that develops training outcomes and objectives for an individual shall train the provider's employees or agents in:

- (1) selecting specific objectives;
- (2) completing task analysis;
- (3) appropriate locations for instruction; and
- (4) appropriate documentation of an individual's progress on outcomes and objectives.
- (c) A provider shall train direct care staff in providing a healthy and safe environment for an individual, including how to:
 - (1) administer medication, monitor side effects, and recognize and prevent dangerous medication interactions;
 - (2) administer first aid;
 - (3) administer cardiopulmonary resuscitation;
 - (4) practice infection control;
 - (5) practice universal precautions;
- (6) manage individual-specific treatments and interventions, including management of an individual's:
 - (A) seizures;
 - (B) behavior;
 - (C) medication side effects;
 - (D) diet and nutrition;
 - (E) swallowing difficulties;
 - (F) emotional and physical crises; and
 - (G) significant health concerns; and
- (7) conduct and participate in emergency drills and evacuations.

(d) Applicable training as required in this section shall be completed prior to any person working with an individual. (*Division of Disability, Aging, and Rehabilitative Services; 460 IAC 6-14-4; filed Nov 4, 2002, 12:04 p.m.: 26 IR 771; filed Aug 29, 2003, 10:30 a.m.: 27 IR 111*)

460 IAC 6-14-5 Requirements for direct care staff

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-11-1.1-9; IC 12-11-2.1-12
Affected: IC 12-11-1.1; IC 12-11-2.1

Sec. 5. All direct care staff working with individuals shall meet the following requirements:

- (1) Be at least eighteen (18) years of age.
- (2) Demonstrate the ability to communicate adequately in order to:
 - (A) complete required forms and reports of visits; and
 - (B) follow oral or written instructions.
- (3) Demonstrate the ability to provide services according to the individual's ISP.
- (4) Demonstrate willingness to accept supervision.
- (5) Demonstrate an interest in and empathy for individuals.

(*Division of Disability, Aging, and Rehabilitative Services; 460 IAC 6-14-5; filed Nov 4, 2002, 12:04 p.m.: 26 IR 772*)

460 IAC 6-14-6 Policies and procedures for conflicts of interest

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-11-1.1-9; IC 12-11-2.1-12
Affected: IC 12-11-1.1; IC 12-11-2.1

Sec. 6. A provider shall develop and enforce policies and procedures regarding conflicts of interest and the disclosure of possible conflicts of interest for all of the provider's employees or agents. (*Division of Disability, Aging, and Rehabilitative Services; 460 IAC 6-14-6; filed Apr 16, 2004, 10:00 a.m.: 27 IR 2724*)

460 IAC 6-14-7 Policies and procedures for code of ethics

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-11-1.1-9; IC 12-11-2.1-12
Affected: IC 12-11-1.1; IC 12-11-2.1

Sec. 7. A provider shall develop and enforce policies and procedures regarding a code of ethics for agents and employees. The policies and procedures shall be consistent with 460 IAC 6-36. (*Division of Disability, Aging, and Rehabilitative Services; 460 IAC 6-14-7; filed Apr 16, 2004, 10:00 a.m.: 27 IR 2724*)

Rule 15. Personnel Records

460 IAC 6-15-1 Applicability

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-11-1.1-9; IC 12-11-2.1-12
Affected: IC 12-11-1.1; IC 12-11-2.1

Sec. 1. This rule applies to all supported living services and supports. (*Division of Disability, Aging, and Rehabilitative Services; 460 IAC 6-15-1; filed Nov 4, 2002, 12:04 p.m.: 26 IR 772*)

460 IAC 6-15-2 Maintenance of personnel files

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-11-1.1-9; IC 12-11-2.1-12
Affected: IC 12-11-1.1; IC 12-11-2.1

Sec. 2. (a) A provider shall maintain in the provider's office files for each employee or agent of the provider.

(b) The provider's files for each employee or agent shall contain the following:

- (1) A negative tuberculosis screening prior to providing services and updated in accordance with recommendations of Centers for Disease Control.
- (2) Cardiopulmonary resuscitation certification and recertification, updated every two (2) years, for each employee or agent who works with individuals.
- (3) Auto insurance information, updated when it is due to expire, if the employee or agent will be transporting an individual in the employee's or agent's personal vehicle.
- (4) Limited criminal history information that meets the requirements of 460 IAC 6-10-5 with the information updated at least every three (3) years.
- (5) Professional licensure, certification, or registration, including renewals, as applicable.
- (6) A copy of the employee's or agent's driver's license, updated when the driver's license is due to expire.
- (7) Copies of:
 - (A) the employee's time records; or
 - (B) the agent's invoices for services.
- (8) Copies of the agenda for each training session attended by the employee or agent, including the following:
 - (A) Subject matter included in each training session.
 - (B) The date and time of each training session.
 - (C) The name of the person or persons conducting each training session.
 - (D) Documentation of the employee's or agent's attendance at each training session, signed by:
 - (i) the employee or agent; and
 - (ii) the trainer.

(*Division of Disability, Aging, and Rehabilitative Services; 460 IAC 6-15-2; filed Nov 4, 2002, 12:04 p.m.: 26 IR 772; filed Apr 16, 2004, 10:00 a.m.: 27 IR 2724*)

Rule 16. Personnel Policies and Manuals

460 IAC 6-16-1 Applicability

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-11-1.1-9; IC 12-11-2.1-12
Affected: IC 12-11-1.1; IC 12-11-2.1

Sec. 1. (a) This rule applies to a provider who uses employees or agents to provide services.

(b) This rule applies to all supported living services and supports. (*Division of Disability, Aging, and Rehabilitative Services; 460 IAC 6-16-1; filed Nov 4, 2002, 12:04 p.m.: 26 IR 772*)

460 IAC 6-16-2 Adoption of personnel policies

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-11-1.1-9; IC 12-11-2.1-12
Affected: IC 12-11-1.1; IC 12-11-2.1

Sec. 2. (a) A provider shall:

- (1) adopt and maintain a written personnel policy;
 - (2) review and update the personnel policy as appropriate; and
 - (3) distribute the personnel policy to each employee or agent.
- (b) The written personnel policy required by subsection (a) shall include at least the following:
- (1) A job description for each position, including the following:
 - (A) Minimum qualifications for the position.
 - (B) Major duties required of the position.
 - (C) Responsibilities of the employee in the position.
 - (D) The name and title of the supervisor to whom the employee in the position must report.
 - (2) A procedure for conducting reference, employment, and criminal background checks on each prospective employee or agent.
 - (3) A prohibition against employing or contracting with a person convicted of the offenses listed in 460 IAC 6-10-5.
 - (4) 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.
 - (5) Disciplinary procedures.
 - (6) A description of grounds for disciplinary action against or dismissal of an employee or agent.
 - (7) A description of the rights and responsibilities of employees or agents, including the responsibilities of administrators and supervisors.

(*Division of Disability, Aging, and Rehabilitative Services; 460 IAC 6-16-2; filed Nov 4, 2002, 12:04 p.m.: 26 IR 772*)

460 IAC 6-16-3 Policies and procedures documentation

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-11-1.1-9; IC 12-11-2.1-12
Affected: IC 12-11-1.1; IC 12-11-2.1

Sec. 3. (a) A provider shall:

- (1) adopt and maintain a written training procedure;
 - (2) review and update the training procedure as appropriate; and
 - (3) distribute the training procedure to the provider's employees or agents.
- (b) The written training procedure required by subsection (a) shall include at least the following:
- (1) Mandatory orientation for each new employee or agent to assure the employee's or agent's understanding of, and compliance with:
 - (A) the mission, goals, organization, and practices of the provider; and
 - (B) the applicable requirements of this article.
 - (2) A system for documenting the training for each employee or agent, including:
 - (A) the type of training provided;
 - (B) the name and qualifications of the trainer;
 - (C) the duration of training;

- (D) the date or dates of training;
 - (E) the signature of the trainer, verifying the satisfactory completion of training by the employee or agent; and
 - (F) the signature of the employee or agent.
- (3) A system for ensuring that a trainer has sufficient education, expertise, and knowledge of the subject to achieve listed outcomes required under the system.
- (4) A system for providing annual in-service training to improve the competence of employees or agents in the following areas:
- (A) Protection of individual rights, including protection against abuse, neglect, or exploitation.
 - (B) Incident reporting.
 - (C) Medication administration if the provider administers medication to an individual.

(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 6-16-3; filed Nov 4, 2002, 12:04 p.m.: 26 IR 773)

460 IAC 6-16-4 Operations manual

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-11-1.1-9; IC 12-11-2.1-12
Affected: IC 12-11-1.1; IC 12-11-2.1

Sec. 4. (a) A provider shall compile the 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.
- (c) Upon the request of the BDDS, the provider shall:
 - (1) supply a copy of the operations manual to the BDDS or other state agency, at no cost; and
 - (2) make the operations manual available to the BDDS or other state agency for inspection at the offices of the provider.

(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 6-16-4; filed Nov 4, 2002, 12:04 p.m.: 26 IR 773)

Rule 17. Maintenance of Records of Services Provided

460 IAC 6-17-1 Applicability

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-11-1.1-9; IC 12-11-2.1-12
Affected: IC 12-11-1.1; IC 12-11-2.1

Sec. 1. This rule applies to all supported living services and supports. *(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 6-17-1; filed Nov 4, 2002, 12:04 p.m.: 26 IR 773)*

460 IAC 6-17-2 Maintenance of records of services provided

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-11-1.1-9; IC 12-11-2.1-12
Affected: IC 12-11-1.1; IC 12-11-2.1

Sec. 2. (a) This section applies to all providers.

- (b) A provider shall maintain in the provider's office documentation of all services provided to an individual.
- (c) Documentation related to an individual required by this article shall be maintained by the provider for at least seven (7) consecutive years.

(d) A provider shall analyze and update the documentation required by:

- (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; and
- (3) the individual's ISP.

(e) A provider shall analyze and update the documentation at least every ninety (90) days if:

- (1) the standards under this article do not provide a standard for analyzing and updating documentation;
- (2) the professional standards applicable to the provider's profession do not provide a standard; or
- (3) a standard is not set out in the individual's ISP.

(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 6-17-2; filed Nov 4, 2002, 12:04 p.m.: 26 IR 774)

460 IAC 6-17-3 Individual's personal file; site of service delivery

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-11-1.1-9; IC 12-11-2.1-12

Affected: IC 12-11-1.1; IC 12-11-2.1

Sec. 3. (a) A provider specified in the individual's ISP as being responsible for maintaining the individual's personal file shall maintain a personal file for the individual at:

- (1) the individual's residence; or
- (2) the primary location where the individual receives services.
- (b) The individual's personal file shall contain at least the following information:
 - (1) The individual's full name.
 - (2) Telephone numbers for emergency services that may be required by the individual.
 - (3) A current sheet with a brief summary regarding:
 - (A) the individual's diagnosis or diagnoses;
 - (B) the individual's treatment protocols, current medications, and other health information specified by the individual's ISP;
 - (C) behavioral information about the individual;
 - (D) likes and dislikes of the individual that have been identified in the individual's ISP; and
 - (E) other information relevant to working with the individual.
 - (4) The individual's history of allergies, if applicable.
 - (5) Consent by the individual or the individual's legal representative for emergency treatment for the individual.
 - (6) A photograph of the individual, if:
 - (A) a photograph is available; and
 - (B) inclusion of a photograph in the individual's file is specified by the individual's ISP.
 - (7) A copy of the individual's current ISP.
 - (8) A copy of the individual's behavioral support plan, if applicable.
 - (9) Documentation of:
 - (A) changes in the individual's physical condition or mental status during the last sixty (60) days;
 - (B) an unusual event such as vomiting, choking, falling, disorientation or confusion, behavioral problems, or seizures occurring during the last sixty (60) days; and
 - (C) the response of each provider to the observed change or unusual event.
 - (10) If an individual's outcomes include bill paying and other financial matters, the individual's file shall contain:
 - (A) the individual's checkbook with clear documentation that the checkbook has been balanced; and
 - (B) bank statements with clear documentation that the bank statements and the individual's checkbook have been reconciled.
 - (11) All environmental assessments conducted during the last sixty (60) days, with the signature of the person or persons conducting the assessment on the assessment.
 - (12) All medication administration documentation for the last sixty (60) days.
 - (13) All seizure management documentation for the last sixty (60) days.
 - (14) Health-related incident management documentation for the last sixty (60) days.
 - (15) All nutritional counseling services documentation for the last sixty (60) days.
 - (16) All behavioral support services documentation for the last sixty (60) days.
 - (17) All outcome directed documentation for the last sixty (60) days.

(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 6-17-3; filed Nov 4, 2002, 12:04 p.m.: 26 IR 774; filed Aug 29, 2003, 10:30 a.m.: 27 IR 111)

460 IAC 6-17-4 Individual's personal file; provider's office

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-11-1.1-9; IC 12-11-2.1-12

Affected: IC 12-11-1.1; IC 12-11-2.1

Sec. 4. (a) A provider specified in the individual's ISP as being responsible for maintaining the individual's personal file shall

maintain a personal file for an individual at the provider's office.

(b) The individual's personal file shall contain documentation of the following:

- (1) A change in an individual's physical condition or mental status.
- (2) An unusual event for the individual.
- (3) All health and medical services provided to an individual.
- (4) An individual's training outcomes.

(c) A change or unusual event referred to in subsection (b) shall include the following:

- (1) Vomiting.
- (2) Choking.
- (3) Falling.
- (4) Disorientation or confusion.
- (5) Patterns of behavior.
- (6) A seizure.

(d) The documentation of a change or an event referred to in subsections (b) and (c) shall include the following:

- (1) The date, time, and duration of the change or event.
- (2) A description of the response of the provider, or the provider's employees or agents to the change or event.
- (3) The signature of the provider or the provider's employees or agents observing the change or event.

(e) The documentation of all health and medical services provided to the individual shall:

- (1) be kept chronologically; and
- (2) include the following:
 - (A) Date of services provided to the individual.
 - (B) A description of services provided.
 - (C) The signature of the health care professional providing the services.

(f) The individual's training file shall include documentation regarding the individual's training goals required by 460 IAC 6-24-1. (*Division of Disability, Aging, and Rehabilitative Services; 460 IAC 6-17-4; filed Nov 4, 2002, 12:04 p.m.: 26 IR 774; filed Aug 29, 2003, 10:30 a.m.: 27 IR 112*)

Rule 18. Behavioral Support Services

460 IAC 6-18-1 Preparation of behavioral support plan

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-11-1.1-9; IC 12-11-2.1-12

Affected: IC 12-11-1.1; IC 12-11-2.1

Sec. 1. A behavioral support services provider shall prepare a behavioral support plan for an individual only after the provider has:

- (1) directly observed the individual; and
- (2) reviewed reports regarding the individual.

(*Division of Disability, Aging, and Rehabilitative Services; 460 IAC 6-18-1; filed Nov 4, 2002, 12:04 p.m.: 26 IR 775*)

460 IAC 6-18-2 Behavioral support plan standards

Authority: IC 12-8-8-4; IC 12-9-2-2; IC 12-11-1.1-9; IC 12-11-2.1-12

Affected: IC 12-11-1.1; IC 12-11-2.1

Sec. 2. (a) A behavioral support plan shall meet the standards set out in this section.

(b) A behavioral support plan shall operationally define the targeted behavior or behaviors.

(c) A behavioral support plan shall be based upon a functional analysis of the targeted behaviors.

(d) A behavioral support plan shall contain written guidelines for teaching the individual functional and useful behaviors to replace the individual's maladaptive behavior.

(e) A behavioral support plan shall use nonaversive methods for teaching functional and useful replacement behaviors.

(f) A behavioral support plan shall conform to the individual's ISP, including the needs and outcomes identified in the ISP

and the ISP's specifications for behavioral support services.

(g) A behavioral support plan shall contain documentation that each person implementing the plan:

(1) has received specific training as provided in the plan in the techniques and procedures required for implementing the behavioral support plan; and

(2) understands how to use the techniques and procedures required to implement the behavioral support plan;

regardless of whether the person implementing the plan is an employee or agent of the behavioral support services provider.

(h) A behavioral support plan shall contain a documentation system for direct care staff working with the individual to record episodes of the targeted behavior or behaviors. The documentation system shall include a method to record the following information:

(1) Dates and times of occurrence of the targeted behavior.

(2) Length of time the targeted behavior lasted.

(3) Description of what precipitated the targeted behavior.

(4) Description of what activities helped alleviate the targeted behavior.

(5) Signature of staff observing and recording the targeted behavior.

(i) If the use of medication is included in a behavioral support plan, a behavioral support plan shall contain:

(1) a plan for assessing the use of the medication and the appropriateness of a medication reduction plan; or

(2) documentation that a medication use reduction plan for the individual was:

(A) implemented within the past five (5) years; and

(B) proved to be not effective.

(j) If a highly restrictive procedure is included in a behavioral support plan, a behavioral support plan shall contain the following:

(1) A functional analysis of the targeted behavior for which a highly restrictive procedure is designed.

(2) Documentation that the risks of the targeted behavior have been weighed against the risk of the highly restrictive procedure.

(3) Documentation that systematic efforts to replace the targeted behavior with an adaptive skill were used and found to be not effective.

(4) Documentation that the individual, the individual's support team and the applicable human rights committee agree that the use of the highly restrictive method is required to prevent significant harm to the individual or others.

(5) Informed consent from the individual or the individual's legal representative.

(6) Documentation that the behavioral support plan is reviewed regularly by the individual's support team.

(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 6-18-2; filed Nov 4, 2002, 12:04 p.m.: 26 IR 775)

460 IAC 6-18-3 Written policy and procedure standards

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-11-1.1-9; IC 12-11-2.1-12

Affected: IC 12-11-1.1; IC 12-11-2.1

Sec. 3. A provider of behavioral support services shall have written policies and procedures that:

(1) limit the use of highly restrictive procedures, including physical restraint or medications to assist in the managing of behavior; and

(2) focus on behavioral supports that begin with less intrusive or restrictive methods before more intrusive or restrictive methods are used.

(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 6-18-3; filed Nov 4, 2002, 12:04 p.m.: 26 IR 776)

460 IAC 6-18-4 Documentation standards

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-11-1.1-9; IC 12-11-2.1-12

Affected: IC 12-11-1.1; IC 12-11-2.1

Sec. 4. (a) A provider of behavioral support services shall maintain documentation regarding the development of a behavioral support plan that:

(1) the least intrusive method was attempted and exhausted first; and

(2) if a highly restrictive procedure is deemed to be necessary and included in a behavioral support plan, the actions required by section 2(j) of this rule have been taken.

(b) A provider of behavioral support services shall maintain the following documentation for each individual served:

(1) A copy of the individual's behavioral support assessment.

(2) If applicable, the individual's behavioral support plan.

(3) Dates, times, and duration of each visit with the individual.

(4) A description of the behavioral support activities conducted.

(5) A description of behavioral support progress made.

(6) The signature of the person providing the behavioral support services on each date the behavioral support service is provided.

(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 6-18-4; filed Nov 4, 2002, 12:04 p.m.: 26 IR 776)

460 IAC 6-18-5 Level 2 clinician standards

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-11-1.1-9; IC 12-11-2.1-12

Affected: IC 12-11-1.1; IC 12-11-2.1

Sec. 5. (a) If a behavioral support plan is developed by a Level 2 clinician, the Level 2 clinician shall be supervised by a Level 1 clinician.

(b) A Level 1 clinician shall give written approval of all behavioral support plans developed by a Level 2 clinician. *(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 6-18-5; filed Nov 4, 2002, 12:04 p.m.: 26 IR 776)*

460 IAC 6-18-6 Implementation of behavioral support plan

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-11-1.1-9; IC 12-11-2.1-12

Affected: IC 12-11-1.1; IC 12-11-2.1

Sec. 6. All providers working with an individual shall implement the behavioral support plan designed by the individual's behavioral support services provider. *(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 6-18-6; filed Nov 4, 2002, 12:04 p.m.: 26 IR 776)*

460 IAC 6-18-7 Human rights committee

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-11-1.1-9; IC 12-11-2.1-12

Affected: IC 12-11-1.1; IC 12-11-2.1

Sec. 7. Beginning July 1, 2004, a provider of behavioral support services who:

(1) prepares a behavioral support plan; or

(2) implements a behavioral support plan;

shall cooperate with the division's or the BDDS's regional human rights committee for the geographic area in which the provider is providing services under this article. *(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 6-18-7; filed Nov 4, 2002, 12:04 p.m.: 26 IR 776)*

Rule 19. Case Management

460 IAC 6-19-1 Information concerning an individual

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-11-1.1-9; IC 12-11-2.1-12

Affected: IC 12-11-1.1; IC 12-11-2.1

Sec. 1. A provider of case management services shall have the following information about an individual receiving case management services from the provider:

(1) The wants and needs of an individual, including the health, safety and behavioral needs of an individual.

(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 6-19-1; filed Nov 4, 2002, 12:04 p.m.: 26 IR 776)

460 IAC 6-19-2 Training and orientation

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-11-1.1-9; IC 12-11-2.1-12

Affected: IC 12-11-1.1; IC 12-11-2.1

Sec. 2. (a) To maintain the BDDS's approval to provide case management services under this article, a provider shall complete twenty (20) hours of training regarding case management services in each calendar year.

(b) The training prescribed by subsection (a) shall include at least ten (10) hours of training approved by the BDDS.

(c) If the BDDS identifies a systemic problem with a provider's case management services, the provider of case management services shall obtain training on the topics recommended by the BDDS. *(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 6-19-2; filed Nov 4, 2002, 12:04 p.m.: 26 IR 777)*

460 IAC 6-19-3 Contact information

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-11-1.1-9; IC 12-11-2.1-12

Affected: IC 12-11-1.1; IC 12-11-2.1

Sec. 3. (a) A provider of case management services shall give the individual or the individual's legal representative, if applicable, clear instructions for contacting the provider.

(b) A provider of case management services shall give the individual or the individual's legal representative, if applicable, a summary of information and procedures if the individual needs assistance or has an emergency before or after business hours. *(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 6-19-3; filed Nov 4, 2002, 12:04 p.m.: 26 IR 777)*

460 IAC 6-19-4 Distribution of information

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-11-1.1-9; IC 12-11-2.1-12

Affected: IC 12-11-1.1; IC 12-11-2.1

Sec. 4. A provider of case management services shall ensure that:

(1) the individual;

(2) the individual's legal representative, if applicable; and

(3) all other providers of services to the individual, regardless of whether the services are provided pursuant to this article; have copies of relevant documentation, including information on individual rights, an individual's individualized support plan, filing complaints, and requesting appeals concerning issues and disputes relating to the services provided to the individual. *(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 6-19-4; filed Nov 4, 2002, 12:04 p.m.: 26 IR 777)*

460 IAC 6-19-5 Evaluation of available providers

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-11-1.1-9; IC 12-11-2.1-12

Affected: IC 12-11-1.1; IC 12-11-2.1

Sec. 5. (a) A provider of case management services shall provide the individual or the individual's legal representative, if applicable, with the following information:

(1) A current list of providers approved under this article, including a complete description of services offered by each provider.

(2) Information regarding services the individual may need that are not provided under this article.

(3) The current BDDS information guide for individuals on how to choose a provider.

(b) The provider of case management services shall assist the individual or the individual's legal representative, if applicable, in evaluating potential service providers. *(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 6-19-5; filed Nov 4, 2002, 12:04 p.m.: 26 IR 777)*

460 IAC 6-19-6 Monitoring of services

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-11-1.1-9; IC 12-11-2.1-12

Affected: IC 12-11-1.1; IC 12-11-2.1

Sec. 6. (a) A provider of case management shall monitor and document the quality, timeliness, and appropriateness of the care, services, and products delivered to an individual.

(b) The documentation required under this section shall include an assessment of the following:

- (1) The appropriateness of the outcomes in the individual's ISP.
 - (2) An individual's progress toward the outcomes in the individual's ISP.
- (c) The documentation required by this section shall include the following:
- (1) Any medication administration system for the individual.
 - (2) An individual's behavioral support plan.
 - (3) Any health-related incident management system for the individual.
 - (4) Any side effect monitoring system for the individual.
 - (5) Any seizure management system for the individual.
 - (6) Any other system for the individual implemented by more than one (1) provider.

(d) A provider of case management services shall continuously monitor the services and outcomes established for the individual in the individual's ISP, including the following:

- (1) A provider of case management services shall timely follow-up on identified problems.
- (2) A provider of case management services shall act immediately to resolve critical issues and crises in accordance with this article.
- (3) If concerns with services or outcomes are identified, a provider of case management services shall:
 - (A) address the concerns in a timely manner; and
 - (B) involve all necessary providers and the individual's support team if necessary.

(e) A provider of case management services who is attempting to resolve a dispute shall follow the dispute resolution procedure described in 460 IAC 6-10-8.

(f) No later than thirty (30) days after the implementation of an individual's ISP, unless otherwise specified in the ISP, a provider of case management shall make the first monitoring contact with the individual.

(g) A provider of case management services shall have regular in-person contact with the individual as required by the ISP and this section. The provider of case management services shall make at least:

- (1) one (1) in-person contact with the individual every ninety (90) days to review and complete with the individual or the individual's representative the case management ninety (90) day check list available to providers of case management on the division's providers' computer automation system;
- (2) two (2) in-person contacts each year in the individual's residence; and
- (3) one (1) in-person contact each year unannounced.

(h) If an individual's ISP requires more contact than required by subsection (g), the individual's ISP shall control the amount of contact a provider of case management services must make with an individual receiving case management services.

(i) A provider of case management services shall coordinate the provision of family and caregiver training services. (*Division of Disability, Aging, and Rehabilitative Services; 460 IAC 6-19-6; filed Nov 4, 2002, 12:04 p.m.: 26 IR 777; filed Aug 29, 2003, 10:30 a.m.: 27 IR 113; filed Apr 16, 2004, 10:00 a.m.: 27 IR 2725*)

460 IAC 6-19-7 Documentation of services provided

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-11-1.1-9; IC 12-11-2.1-12

Affected: IC 12-11-1.1; IC 12-11-2.1

Sec. 7. (a) A provider of case management services shall maintain documentation of each contact with an:

- (1) individual; and
 - (2) individual's providers.
- (b) The documentation shall be updated and revised whenever case management services are provided for the individual.
- (c) If a provider of case management services visits an individual at the individual's residence, the provider must sign in with

the provider of environmental and living arrangement supports. (*Division of Disability, Aging, and Rehabilitative Services; 460 IAC 6-19-7; filed Nov 4, 2002, 12:04 p.m.: 26 IR 778*)

460 IAC 6-19-8 Documentation; problem resolution

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-11-1.1-9; IC 12-11-2.1-12

Affected: IC 12-11-1.1; IC 12-11-2.1

Sec. 8. (a) A provider of case management services shall document the following:

(1) The provider's follow-up on problems.

(2) The resolution of problems.

(b) A provider of case management services shall keep the documentation required in this section in an individual's personal record maintained by the case manager. (*Division of Disability, Aging, and Rehabilitative Services; 460 IAC 6-19-8; filed Nov 4, 2002, 12:04 p.m.: 26 IR 778*)

460 IAC 6-19-9 Conflict of interest

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-11-1.1-9; IC 12-11-2.1-12

Affected: IC 12-11-1.1; IC 12-11-2.1

Sec. 9. If a person provides case management services to an individual, then that person shall not provide any other service under this article to that particular individual. (*Division of Disability, Aging, and Rehabilitative Services; 460 IAC 6-19-9; filed Nov 4, 2002, 12:04 p.m.: 26 IR 778*)

Rule 20. Community-Based Sheltered Employment Services

460 IAC 6-20-1 Staffing requirements

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-11-1.1-9; IC 12-11-2.1-12

Affected: IC 12-11-1.1; IC 12-11-2.1

Sec. 1. Community-based sheltered employment services shall be provided with a staff ratio that does not exceed eight (8) individuals to one (1) staff member. (*Division of Disability, Aging, and Rehabilitative Services; 460 IAC 6-20-1; filed Nov 4, 2002, 12:04 p.m.: 26 IR 778*)

460 IAC 6-20-2 Integrated setting required

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-11-1.1-9; IC 12-11-2.1-12

Affected: IC 12-11-1.1; IC 12-11-2.1

Sec. 2. Community-based employment services shall be provided in an integrated setting. (*Division of Disability, Aging, and Rehabilitative Services; 460 IAC 6-20-2; filed Nov 4, 2002, 12:04 p.m.: 26 IR 778*)

Rule 21. Environmental Modification Supports

460 IAC 6-21-1 Warranty required

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-11-1.1-9; IC 12-11-2.1-12

Affected: IC 12-11-1.1; IC 12-11-2.1

Sec. 1. All environmental modification supports provided to an individual under this rule shall be warranted for at least ninety (90) days. (*Division of Disability, Aging, and Rehabilitative Services; 460 IAC 6-21-1; filed Nov 4, 2002, 12:04 p.m.: 26 IR 778*)

460 IAC 6-21-2 Documentation required

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-11-1.1-9; IC 12-11-2.1-12

Affected: IC 12-11-1.1; IC 12-11-2.1

Sec. 2. A provider of environmental modification supports shall maintain the following documentation regarding support provided to an individual:

- (1) The installation date of any adaptive aid or device, assistive technology, or other equipment.
- (2) The maintenance date of any adaptive aid or device, assistive technology, or other equipment.
- (3) A change made to any adaptive aid or device, assistive technology, or other equipment, including any:
 - (A) alteration;
 - (B) correction; or
 - (C) replacement.

(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 6-21-2; filed Nov 4, 2002, 12:04 p.m.: 26 IR 778)

Rule 22. Facility-Based Sheltered Employment Services

460 IAC 6-22-1 Staffing requirement

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-11-1.1-9; IC 12-11-2.1-12

Affected: IC 12-11-1.1; IC 12-11-2.1

Sec. 1. All facility-based sheltered employment services shall be provided with a staff ratio that does not exceed twenty (20) individuals to one (1) staff member. *(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 6-22-1; filed Nov 4, 2002, 12:04 p.m.: 26 IR 779)*

Rule 23. Family and Caregiver Training Services

460 IAC 6-23-1 Requirements for provision of services

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-11-1.1-9; IC 12-11-2.1-12

Affected: IC 12-11-1.1; IC 12-11-2.1

Sec. 1. A person providing family and caregiver training services shall have:

- (1) education;
- (2) training; or
- (3) experience;

directly related to the training the person will be providing. *(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 6-23-1; filed Nov 4, 2002, 12:04 p.m.: 26 IR 779)*

460 IAC 6-23-2 Supervision of providers

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-11-1.1-9; IC 12-11-2.1-12

Affected: IC 12-11-1.1; IC 12-11-2.1

Sec. 2. Any person providing family and caregiver training services shall be supervised by the:

- (1) individual whose family members or caregiver is receiving training; and
- (2) provider of case management services to the individual.

(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 6-23-2; filed Nov 4, 2002, 12:04 p.m.: 26 IR 779)

Rule 24. Training Services

460 IAC 6-24-1 Coordination of training services and training plan

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-11-1.1-9; IC 12-11-2.1-12

Affected: IC 12-11-1.1; IC 12-11-2.1

Sec. 1. (a) A provider designated in an individual's ISP as responsible for providing training to an individual shall create a training plan for the individual.

(b) A training plan shall:

(1) consist of a formal description of outcomes, objectives, and strategies, including persons responsible for implementation; and

(2) be designed to enhance skill acquisition and increase independence.

(c) The provider shall assess the appropriateness of an individual's outcomes at least once every ninety (90) days.

(d) All providers responsible for providing training to an individual shall:

(1) coordinate the training services provided to an individual; and

(2) share documentation regarding the individual's training;

as required by the individual's ISP. (*Division of Disability, Aging, and Rehabilitative Services; 460 IAC 6-24-1; filed Nov 4, 2002, 12:04 p.m.: 26 IR 779; filed Aug 29, 2003, 10:30 a.m.: 27 IR 113*)

460 IAC 6-24-2 Required documentation

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-11-1.1-9; IC 12-11-2.1-12

Affected: IC 12-11-1.1; IC 12-11-2.1

Sec. 2. (a) The provider identified in section 1 of this rule shall maintain a personal file for each individual served.

(b) The individual's file shall:

(1) be kept chronologically; and

(2) include the following information:

(A) Measurement of the individual's progress toward each training outcome identified in the individual's ISP.

(B) Dates, times, and duration of training services provided to the individual.

(C) A description of training activities conducted on each date.

(D) The signature of the person providing the service each time training is provided.

(*Division of Disability, Aging, and Rehabilitative Services; 460 IAC 6-24-2; filed Nov 4, 2002, 12:04 p.m.: 26 IR 779; filed Aug 29, 2003, 10:30 a.m.: 27 IR 114*)

460 IAC 6-24-3 Management of individual's financial resources

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-11-1.1-9; IC 12-11-2.1-12

Affected: IC 12-11-1.1; IC 12-11-2.1

Sec. 3. (a) This section applies to:

(1) an individual's residential living allowance management services provider; or

(2) the provider identified in an individual's individualized support plan as being responsible for an individual's property or financial resources.

(b) The provider shall assist an individual to:

(1) obtain, possess, and maintain financial assets, property, and economic resources; and

(2) obtain insurance at the individual's expense to protect the individual's assets and property.

(c) If the provider is responsible for management of an individual's funds, the provider shall do the following:

(1) Maintain separate accounts for each individual.

(2) Provide monthly account balances and records of transactions to the individual and, if applicable, the individual's legal representative.

(3) Inform the individual or the individual's legal representative, if applicable, that the payee is required by law to spend the individual's funds only for the needs of the individual.

(*Division of Disability, Aging, and Rehabilitative Services; 460 IAC 6-24-3; filed Nov 4, 2002, 12:04 p.m.: 26 IR 779*)

Rule 25. Health Care Coordination Services

460 IAC 6-25-1 Provider of health care coordination services

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-11-1.1-9; IC 12-11-2.1-12

Affected: IC 12-11-1.1; IC 12-11-2.1

Sec. 1. Coordination of the health care for an individual shall be the responsibility of either of the following:

- (1) A provider of health care coordination services.
- (2) The provider identified in an individual's ISP as responsible for the health care of the individual.

(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 6-25-1; filed Nov 4, 2002, 12:04 p.m.: 26 IR 780)

460 IAC 6-25-2 Coordination of health care

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-11-1.1-9; IC 12-11-2.1-12

Affected: IC 12-11-1.1; IC 12-11-2.1

Sec. 2. The provider identified in section 1 of this rule shall coordinate the health care received by the individual, including:

- (1) annual physical, dental, and vision examinations as ordered by the individual's physician;
- (2) routine examinations as ordered by the individual's physician;
- (3) routine screenings as ordered by the individual's physician;
- (4) identification and treatment of allergies as ordered by the individual's physician; and
- (5) referrals to specialists.

(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 6-25-2; filed Nov 4, 2002, 12:04 p.m.: 26 IR 780)

460 IAC 6-25-3 Documentation of health care services received by an individual

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-11-1.1-9; IC 12-11-2.1-12

Affected: IC 12-11-1.1; IC 12-11-2.1

Sec. 3. (a) The provider identified in section 1 of this rule shall maintain a personal file for each individual served.

(b) The individual's personal file shall contain the following information:

- (1) The date of health and medical services provided to the individual.
- (2) A description of the health care or medical services provided to the individual.
- (3) The signature of the person providing the health care or medical service for each date a service is provided.
- (4) Additional information and documentation required in this rule, including documentation of the following:
 - (A) An organized system for medication administration.
 - (B) An individual's refusal to take medication.
 - (C) Monitoring of medication side effects.
 - (D) Seizure tracking.
 - (E) Changes in an individual's status.
 - (F) An organized system of health-related incident management.
 - (G) If applicable to this provider, an investigation of the death of an individual.

(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 6-25-3; filed Nov 4, 2002, 12:04 p.m.: 26 IR 780)

460 IAC 6-25-4 Organized system for medication administration required

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-11-1.1-9; IC 12-11-2.1-12

Affected: IC 12-11-1.1; IC 12-11-2.1

Sec. 4. (a) The provider identified in section 1 of this rule shall design an organized system of medication administration for the individual.

(b) The provider shall:

- (1) document the system in writing; and

- (2) distribute the document to all providers administering medication to the individual.
- (c) The document shall be placed in the individual's file maintained by all providers administering medication to the individual.
- (d) The system required in subsection (a) shall contain at least the following elements:
 - (1) Identification and description of each medication required for the individual.
 - (2) Documentation that the individual's medication is administered only by trained and authorized personnel unless the individual is capable of self-administration of medication as provided for in the individual's ISP.
 - (3) Documentation of the administration of medication, including the following:
 - (A) Administration of medication from original labeled prescription containers.
 - (B) Name of medication administered.
 - (C) Amount of medication administered.
 - (D) The date and time of administration.
 - (E) The initials of the person administering the medication.
 - (4) Procedures for the destruction of unused medication.
 - (5) Documentation of medication administration errors.
 - (6) A system for the prevention or minimization of medication administration errors.
 - (7) When indicated as necessary by an individual's ISP, procedures for the storage of medication:
 - (A) in the original labeled prescription container;
 - (B) in a locked area when stored at room temperature;
 - (C) in a locked container in the refrigerator if refrigeration is required;
 - (D) separately from nonmedical items; and
 - (E) under prescribed conditions of temperature, light, humidity, and ventilation.
 - (8) Documentation of an individual's refusal to take medication as required in section 5 of this rule.
 - (9) A system for communication among all providers that administer medication to an individual.
 - (10) All providers administering medication to the individual shall:
 - (A) implement; and
 - (B) comply with;

the organized system of medication administration designed by the provider designated in section 1 of this rule.

(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 6-25-4; filed Nov 4, 2002, 12:04 p.m.: 26 IR 780)

460 IAC 6-25-5 Individual's refusal to take medication

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-11-1.1-9; IC 12-11-2.1-12

Affected: IC 12-11-1.1; IC 12-11-2.1

Sec. 5. (a) If an individual refuses to take medication, the provider attempting to administer the medication shall do the following:

- (1) Document the following information:
 - (A) The name of the medication refused by the individual.
 - (B) The date, time, and duration of the refusal.
 - (C) A description of the provider's response to the refusal.
 - (D) The signature of the person or persons observing the refusal.
- (2) Supply the documentation to the provider identified in section 1 of this rule.
- (b) The provider identified in section 1 of this rule shall review the individual's refusal to take medication with:
 - (1) the individual's physician; and
 - (2) the individual's support team;

to ensure the health and safety of the individual. *(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 6-25-5; filed Nov 4, 2002, 12:04 p.m.: 26 IR 781)*

460 IAC 6-25-6 Monitoring of medication side effects

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-11-1.1-9; IC 12-11-2.1-12

Affected: IC 12-11-1.1; IC 12-11-2.1

Sec. 6. (a) The provider designated in section 1 of this rule shall design a system to monitor side effects an individual may experience as a result of medication the individual takes.

(b) The provider shall:

- (1) document the system in writing; and
- (2) distribute the document to all providers working with the individual.

(c) The system required in subsection (a) shall contain at least the following elements:

(1) Training of direct care staff, employees, and agents concerning:

(A) the identification of:

- (i) side effects; and
- (ii) interactions;

of all medication administered to an individual; and

(B) instruction on medication side effects and interactions.

(2) A side effect tracking record that includes:

- (A) how often the individual should be monitored for side effects of each medication administered to the individual;
- (B) who shall perform the monitoring; and
- (C) when monitoring shall be performed.

(3) A system for communication among all providers working with an individual regarding the monitoring of medication side effects.

(d) All providers working with an individual shall:

- (1) implement; and
- (2) comply with;

the medication side effect monitoring system designed by the provider designated in section 1 of this rule. (*Division of Disability, Aging, and Rehabilitative Services; 460 IAC 6-25-6; filed Nov 4, 2002, 12:04 p.m.: 26 IR 781*)

460 IAC 6-25-7 Seizure management

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-11-1.1-9; IC 12-11-2.1-12

Affected: IC 12-11-1.1; IC 12-11-2.1

Sec. 7. (a) The provider designated in section 1 of this rule shall design a system of seizure management for the individual.

(b) The provider shall communicate the system in writing to all providers working with the individual.

(c) The system of seizure management prescribed by subsection (a) shall include at least the following elements:

(1) Training of direct care staff, employees, or agents concerning the administration of medication.

(2) A seizure tracking record for documenting events:

- (A) immediately preceding a seizure;
- (B) during a seizure; and
- (C) following a seizure.

(3) Documentation of any necessary physician follow-up and follow along services.

(4) A system for checking the individual's levels of seizure medication:

- (A) at least annually; or
- (B) as ordered by the individual's physician.

(5) A system for communication among all providers working with the individual concerning the individual's seizures.

(d) All providers working with the individual shall:

- (1) implement; and
- (2) comply with;

the seizure management system developed by the provider designated in section 1 of this rule. (*Division of Disability, Aging, and Rehabilitative Services; 460 IAC 6-25-7; filed Nov 4, 2002, 12:04 p.m.: 26 IR 781*)

460 IAC 6-25-8 Changes in an individual's status

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-11-1.1-9; IC 12-11-2.1-12

Affected: IC 12-11-1.1; IC 12-11-2.1

Sec. 8. (a) The provider identified in section 1 of this rule shall maintain a personal file for an individual at the provider's office. The file shall contain documentation of any change in an individual's physical condition, mental status, or any unusual event, including the following:

- (1) Vomiting.
- (2) Choking.
- (3) Falling.
- (4) Disorientation or confusion.
- (5) Patterns of behavior.
- (6) Seizures.

(b) The documentation of a change or event required by subsection (a) shall include:

- (1) dates, times, and duration of the change or event;
- (2) a description of the response of the provider, or the provider's employees or agents to the change or event; and
- (3) the signature of the person or persons observing the change or event.

(c) A provider or providers working with an individual shall supply to the provider identified in section 1 of this rule any information regarding any change or event listed in subsection (a) that is observed while the provider is providing services to the individual.

(d) Except as provided in subsection (e), a provider observing a change in an individual's physical condition or mental status, or any unusual event, shall supply the information required in subsection (c) to the provider identified in section 1 of this rule as follows:

- (1) within twenty-four (24) hours of the change or event; or
- (2) by noon on the next business day;

whichever is later.

(e) If the change in an individual's physical condition or mental status or the unusual event is also a reportable incident under 460 IAC 6-9-5, the information shall be provided within twenty-four (24) hours. (*Division of Disability, Aging, and Rehabilitative Services; 460 IAC 6-25-8; filed Nov 4, 2002, 12:04 p.m.: 26 IR 782*)

460 IAC 6-25-9 Health-related incident management

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-11-1.1-9; IC 12-11-2.1-12

Affected: IC 12-11-1.1; IC 12-11-2.1

Sec. 9. (a) The provider identified in section 1 of this rule shall design a system of management for health-related incidents involving an individual.

(b) The health-related incident management system prescribed by subsection (a) shall provide an internal review process for any health-related reportable incident. The provider's internal review process shall include at least the following:

- (1) A trend analysis of incidents for an individual.
- (2) Documentation:
 - (A) that summarizes the findings of the analysis conducted under subdivision (1); and
 - (B) of the steps taken to prevent or minimize the occurrence of incidents in the future.
- (3) A system for communication among all providers working with an individual regarding health-related incidents involving the individual.

(c) All providers working with an individual shall implement the health-related incident management system designed by the provider identified in section 1 of this rule. (*Division of Disability, Aging, and Rehabilitative Services; 460 IAC 6-25-9; filed Nov 4, 2002, 12:04 p.m.: 26 IR 782*)

460 IAC 6-25-10 Investigation of death

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-11-1.1-9; IC 12-11-2.1-12

Affected: IC 12-11-1.1; IC 12-11-2.1

Sec. 10. (a) If an individual dies, an investigation into the death shall be conducted by the provider identified in section 1 of this rule, except as provided in subsection (b).

(b) If the provider identified in section 1 of this rule is a family member of the individual, then the provider of case management services to an individual shall conduct an investigation into the death of the individual. If there is no provider providing case management services to the individual, then the individual's service coordinator shall conduct an investigation into the death of the individual.

(c) A provider conducting an investigation into the death of an individual shall meet the following requirements:

(1) Notify by telephone the BDDS's central office in Indianapolis not later than twenty-four (24) hours after the death.

(2) Notify adult protective services or child protection services, as applicable, not later than twenty-four (24) hours after the death.

(3) Collect and review documentation of all events, incidents, and occurrences in the individual's life for at least the thirty (30) day period immediately before:

(A) the death of the individual;

(B) the hospitalization in which the individual's death occurred; or

(C) the individual's transfer to a nursing home in which death occurred within ninety (90) days of that transfer.

(4) In conjunction with all providers of services to the deceased individual, review and document all the actions of all employees or agents of all providers for the thirty (30) day period immediately before:

(A) the individual's death;

(B) the hospitalization in which the individual's death occurred; or

(C) the individual's transfer to a nursing home in which death occurred within ninety (90) days of that transfer.

(5) Document conclusions and make recommendations arising from the investigation.

(6) Document implementation of any recommendations made under subdivision (5).

(7) No later than fifteen (15) days after the individual's death, send to the BDDS:

(A) a completed notice of an individual's death on a form prescribed by the BDDS; and

(B) a final report that includes all documentation required by subdivisions (1) through (6) for review by the division's mortality review committee.

(d) A provider shall respond to any additional requests for information made by the mortality review committee within seven (7) days of the provider's receipt of a request.

(e) A provider shall submit the documentation to the BDDS to support the provider's implementation of specific recommendations made by the mortality review committee. (*Division of Disability, Aging, and Rehabilitative Services; 460 IAC 6-25-10; filed Nov 4, 2002, 12:04 p.m.: 26 IR 782; filed Aug 29, 2003, 10:30 a.m.: 27 IR 114*)

Rule 26. Nutritional Counseling Services

460 IAC 6-26-1 Specialized diet program

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-11-1.1-9; IC 12-11-2.1-12

Affected: IC 12-11-1.1; IC 12-11-2.1

Sec. 1. (a) A provider of nutritional counseling services shall design and document a dining plan for an individual in accordance with the individual's ISP.

(b) An individual's dining plan shall include the following:

(1) Any special dining needs of an individual.

(2) Identification of swallowing difficulties.

(3) Identification of risk of aspiration.

(4) The need for adaptive equipment.

(c) A provider who has designed a dining plan for an individual shall provide assessment and oversight of:

- (1) the dining plan; and
- (2) the person or persons implementing the dining plan.

(d) A provider shall follow any specialized diet program designed by the provider of nutritional counseling services to an individual, including any documentation requirements contained in the individual's dining plan. (*Division of Disability, Aging, and Rehabilitative Services; 460 IAC 6-26-1; filed Nov 4, 2002, 12:04 p.m.: 26 IR 783*)

Rule 27. Occupational Therapy Services

460 IAC 6-27-1 Supervision

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-11-1.1-9; IC 12-11-2.1-12
Affected: IC 12-11-1.1; IC 12-11-2.1

Sec. 1. Any occupational therapy assistant or occupational therapy aide assisting in the delivery of occupational therapy services to an individual shall do so under the direct supervision of an occupational therapist approved under this article. (*Division of Disability, Aging, and Rehabilitative Services; 460 IAC 6-27-1; filed Nov 4, 2002, 12:04 p.m.: 26 IR 783*)

Rule 28. Personal Emergency Response System Supports

460 IAC 6-28-1 Warranty required

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-11-1.1-9; IC 12-11-2.1-12
Affected: IC 12-11-1.1; IC 12-11-2.1

Sec. 1. All personal emergency response system supports provided to an individual under this rule shall be warranted for at least ninety (90) days. (*Division of Disability, Aging, and Rehabilitative Services; 460 IAC 6-28-1; filed Nov 4, 2002, 12:04 p.m.: 26 IR 783*)

460 IAC 6-28-2 Documentation

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-11-1.1-9; IC 12-11-2.1-12
Affected: IC 12-11-1.1; IC 12-11-2.1

Sec. 2. A provider of personal emergency response system supports shall maintain the following documentation regarding support provided to an individual:

- (1) The installation date of any device.
- (2) The maintenance date of any device.
- (3) Any change made to any device, including an alteration, correction or replacement.

(*Division of Disability, Aging, and Rehabilitative Services; 460 IAC 6-28-2; filed Nov 4, 2002, 12:04 p.m.: 26 IR 783*)

Rule 29. Physical Environment

460 IAC 6-29-1 Environment shall conform to ISP

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-11-1.1-9; IC 12-11-2.1-12
Affected: IC 12-11-1.1; IC 12-11-2.1

Sec. 1. A provider designated in the individual's ISP as responsible for providing environmental and living arrangement support for the individual shall ensure that an individual's physical environment conforms to the requirements of:

- (1) the individual's ISP; and
- (2) this rule.

(*Division of Disability, Aging, and Rehabilitative Services; 460 IAC 6-29-1; filed Nov 4, 2002, 12:04 p.m.: 26 IR 783*)

460 IAC 6-29-2 Safety of individual's environment

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-11-1.1-9; IC 12-11-2.1-12

Affected: IC 12-11-1.1; IC 12-11-2.1

Sec. 2. (a) A provider designated in the individual's ISP as responsible for providing environmental and living arrangement support shall provide services in a safe environment that is:

- (1) maintained in good repair, inside and out; and
- (2) free from:

- (A) combustible debris;
- (B) accumulated waste material;
- (C) offensive odors; and
- (D) rodent or insect infestation.

(b) The provider shall ensure that:

- (1) an assessment of the individual's environment is conducted every ninety (90) days; and
- (2) the results of the assessment are documented.

(c) If an environmental assessment determines that an environment is unsafe for an individual, the provider shall take the appropriate steps to ensure that the individual is safe, including the following, when appropriate:

- (1) Filing an incident report.
- (2) Working with the individual and the support team to resolve physical environmental issues.

(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 6-29-2; filed Nov 4, 2002, 12:04 p.m.: 26 IR 784)

460 IAC 6-29-3 Monitoring an individual's environment

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-11-1.1-9; IC 12-11-2.1-12

Affected: IC 12-11-1.1; IC 12-11-2.1

Sec. 3. The provider designated in an individual's ISP as responsible for providing environmental and living arrangement support shall ensure that appropriate devices or home modifications, or both:

- (1) are provided to the individual in accordance with the individual's ISP; and
- (2) satisfy the federal Americans with Disabilities Act requirements and guidelines.

(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 6-29-3; filed Nov 4, 2002, 12:04 p.m.: 26 IR 784)

460 IAC 6-29-4 Compliance of environment with building and fire codes

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-11-1.1-9; IC 12-11-2.1-12

Affected: IC 12-11-1.1; IC 12-11-2.1

Sec. 4. (a) A provider designated in an individual's ISP as responsible for providing environmental and living arrangement support shall ensure that an individual's living areas comply with the requirements of this section.

(b) An individual's living areas shall meet Indiana Code and local building requirements for single family dwellings or multiple family dwellings as applicable.

(c) An individual's living areas shall contain a working smoke detector or smoke detectors that are:

- (1) tested at least once a month; and
- (2) located in areas considered appropriate by the local fire marshal.

(d) An individual's living areas shall contain a working fire extinguisher or extinguishers that are inspected annually.

(e) An individual's living area shall, if required by the individual's ISP:

- (1) contain operable antiscald devices; or
- (2) have hot water temperature no higher than one hundred ten (110) degrees Fahrenheit.

(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 6-29-4; filed Nov 4, 2002, 12:04 p.m.: 26 IR 784; filed Aug 29, 2003, 10:30 a.m.: 27 IR 114)

460 IAC 6-29-5 Safety and security policies and procedures

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-11-1.1-9; IC 12-11-2.1-12

Affected: IC 12-11-1.1; IC 12-11-2.1

Sec. 5. (a) A provider designated in an individual's ISP as responsible for providing environmental and living arrangement support for the individual shall:

(1) maintain specific written safety and security policies and procedures for an individual; and

(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 law enforcement 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 a tornado, fire, behavioral incident, elopement, or snow.

(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 6-29-5; filed Nov 4, 2002, 12:04 p.m.: 26 IR 784)

460 IAC 6-29-6 Safety and security training

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-11-1.1-9; IC 12-11-2.1-12

Affected: IC 12-11-1.1; IC 12-11-2.1

Sec. 6. (a) A provider designated in an individual's ISP as responsible for providing environmental and living arrangement support shall provide training to:

(1) the provider's employees or agents; and

(2) the individual, in the individual's mode of communication;

concerning procedures to be followed in an emergency or crisis.

(b) The training prescribed by subsection (a) shall include the following:

(1) Evacuation procedures.

(2) Responsibilities during drills.

(3) The designated meeting place outside the site of service delivery in an emergency.

(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 6-29-6; filed Nov 4, 2002, 12:04 p.m.: 26 IR 784)

460 IAC 6-29-7 Individual's inability to follow safety and security procedures

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-11-1.1-9; IC 12-11-2.1-12

Affected: IC 12-11-1.1; IC 12-11-2.1

Sec. 7. If an individual is medically or functionally unable to follow procedures for dealing with an emergency or crisis, the provider of environmental and living arrangement support shall document in writing:

(1) that the individual is unable to follow emergency or crisis procedures; and

(2) the provider's plan for support of the individual in an emergency or crisis.

(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 6-29-7; filed Nov 4, 2002, 12:04 p.m.: 26 IR 785)

460 IAC 6-29-8 Emergency telephone numbers

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-11-1.1-9; IC 12-11-2.1-12

Affected: IC 12-11-1.1; IC 12-11-2.1

Sec. 8. (a) A provider designated in an individual's ISP as responsible for providing environmental and living arrangement support shall ensure that an emergency telephone number list is located:

(1) in an area visible from the telephone used by an individual; or

(2) as indicated in the individual's ISP.

(b) The emergency telephone list shall include the following:

(1) Information given to the individual by the individual's provider of case management services.

- (2) The local emergency number, for example, 911.
- (3) The telephone number of the individual's legal representative or advocate, if applicable.
- (4) Any telephone numbers specified in the individual's ISP, including telephone numbers for the following:
 - (A) The local BDDS office.
 - (B) The provider of case management services to the individual.
 - (C) Adult protective services or child protection services as applicable.
 - (D) The developmental disabilities waiver ombudsman.
 - (E) Any other service provider identified in the individual's ISP.

(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 6-29-8; filed Nov 4, 2002, 12:04 p.m.: 26 IR 785)

460 IAC 6-29-9 Change in location of residence

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-11-1.1-9; IC 12-11-2.1-12

Affected: IC 12-11-1.1; IC 12-11-2.1

Sec. 9. A provider designated in an individual's ISP as responsible for providing environmental and living arrangement support shall notify the individual's service coordinator at least twenty (20) days before any contemplated change of the individual's residence. The change in the individual's residence may not take place until written approval is received from the individual's service coordinator. *(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 6-29-9; filed Aug 29, 2003, 10:30 a.m.: 27 IR 115)*

Rule 30. Residential Living Allowance and Management Services

460 IAC 6-30-1 Documentation required

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-11-1.1-9; IC 12-11-2.1-12

Affected: IC 12-11-1.1; IC 12-11-2.1

Sec. 1. A provider of residential living allowance and management services shall maintain the following documentation:

- (1) Documentation that an individual's residential living allowance was deposited in the individual's personal account.
- (2) Receipts for all expenditures made from the individual's financial resources and food stamps, including receipts for rent, utilities, groceries, clothing, household goods, and other expenditures.
- (3) If applicable, an individual's ICLB.

(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 6-30-1; filed Nov 4, 2002, 12:04 p.m.: 26 IR 785)

Rule 31. Respite Care Services

460 IAC 6-31-1 Documentation required

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-11-1.1-9; IC 12-11-2.1-12

Affected: IC 12-11-1.1; IC 12-11-2.1

Sec. 1. (a) A provider of respite care services shall maintain chronological documentation of the services provided for an individual.

(b) The documentation shall include the following:

- (1) The date and duration of respite care services provided.
- (2) The signature of the person providing respite care services.
- (3) The location and setting where the respite care service was provided.
- (4) The reason for the respite care services.

(c) Documentation shall be updated, reviewed, and analyzed whenever respite care services are provided. *(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 6-31-1; filed Nov 4, 2002, 12:04 p.m.: 26 IR 785; filed Apr 16, 2004, 10:00 a.m.: 27 IR 2725)*

Rule 32. Specialized Medical Equipment and Supplies Supports

460 IAC 6-32-1 Warranty required

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-11-1.1-9; IC 12-11-2.1-12
Affected: IC 12-11-1.1; IC 12-11-2.1

Sec. 1. All specialized medical equipment and supplies supports provided to an individual under this rule shall be warranted for at least ninety (90) days. (*Division of Disability, Aging, and Rehabilitative Services; 460 IAC 6-32-1; filed Nov 4, 2002, 12:04 p.m.: 26 IR 785*)

460 IAC 6-32-2 Documentation required

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-11-1.1-9; IC 12-11-2.1-12
Affected: IC 12-11-1.1; IC 12-11-2.1

Sec. 2. A provider of specialized medical equipment and supplies supports shall maintain the following documentation regarding support provided to an individual:

- (1) The installation date of any adaptive aid or device, assistive technology, or other equipment.
- (2) The maintenance date of any adaptive aid or device, assistive technology, or other equipment.
- (3) Any change made to any adaptive aid or device, assistive technology, or other equipment, including an alteration, correction, or replacement.

(*Division of Disability, Aging, and Rehabilitative Services; 460 IAC 6-32-2; filed Nov 4, 2002, 12:04 p.m.: 26 IR 785*)

Rule 33. Speech-Language Therapy Services

460 IAC 6-33-1 Supervision required

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-11-1.1-9; IC 12-11-2.1-12
Affected: IC 12-11-1.1; IC 12-11-2.1

Sec. 1. Any speech-language pathology aide providing speech-language services under this article shall provide services under the direct supervision of a speech pathologist approved under this article. (*Division of Disability, Aging, and Rehabilitative Services; 460 IAC 6-33-1; filed Nov 4, 2002, 12:04 p.m.: 26 IR 786*)

Rule 34. Transportation Services

460 IAC 6-34-1 Valid driver's license required

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-11-1.1-9; IC 12-11-2.1-12
Affected: IC 12-11-1.1; IC 12-11-2.1

Sec. 1. A provider of transportation services shall ensure that an individual is transported only by a person who has a valid Indiana:

- (1) operator's license;
- (2) chauffeur's license;
- (3) public passenger chauffeur's license; or
- (4) commercial driver's license;

issued to the person by the Indiana bureau of motor vehicles to drive the type of motor vehicle for which the license was issued. (*Division of Disability, Aging, and Rehabilitative Services; 460 IAC 6-34-1; filed Nov 4, 2002, 12:04 p.m.: 26 IR 786*)

460 IAC 6-34-2 Vehicle requirements

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-11-1.1-9; IC 12-11-2.1-12
Affected: IC 12-11-1.1; IC 12-11-2.1

Sec. 2. A provider of transportation services shall ensure that an individual is transported only in a vehicle:

- (1) maintained in good repair;
- (2) properly registered with the Indiana bureau of motor vehicles; and
- (3) insured as required under Indiana law.

(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 6-34-2; filed Nov 4, 2002, 12:04 p.m.: 26 IR 786)

460 IAC 6-34-3 Vehicle liability insurance

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-11-1.1-9; IC 12-11-2.1-12
Affected: IC 12-11-1.1; IC 12-11-2.1

Sec. 3. (a) A provider of transportation services shall secure liability insurance for all vehicles:

- (1) owned or leased by the provider; and
 - (2) used for the transportation of an individual receiving services.
- (b) The liability insurance required by subsection (a) shall cover:
- (1) personal injury;
 - (2) loss of life; or
 - (3) property damage;

to an individual, if the loss, injury, or damage occurs during the provision of transportation services to the individual by the provider.

(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 6-34-3; filed Nov 4, 2002, 12:04 p.m.: 26 IR 786)

Rule 35. Applied Behavior Analysis Services

460 IAC 6-35-1 Preparation of behavior analysis support plan

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-11-1.1-9; IC 12-11-2.1-12
Affected: IC 12-11-1.1; IC 12-11-2.1

Sec. 1. An applied behavior analysis services provider shall prepare a *[sic., an]* applied behavior analysis support plan in accordance with 460 IAC 6-18-1. *(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 6-35-1; filed Aug 29, 2003, 10:30 a.m.: 27 IR 115)*

460 IAC 6-35-2 Applied behavior analysis support plan standards

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-11-1.1-9; IC 12-11-2.1-12
Affected: IC 12-11-1.1; IC 12-11-2.1

Sec. 2. (a) An applied behavior analysis support plan developed by an applied behavior analysis services provider shall meet the standards set out in 460 IAC 6-18-2.

(b) In addition to the requirements contained in 460 IAC 6-18-2, an applied behavior analysis support plan developed by an applied behavior analysis services provider shall meet the following requirements:

- (1) Provide for applied behavior analysis support services for a minimum of four (4) to six (6) hours of service five (5) to seven (7) days a week for a two (2) to three (3) year period.
- (2) Be based upon discrete trial therapy.
- (3) Contain targeted skills that are broken down into small attainable tasks.
- (4) Emphasize skills that are prerequisites to language development, such as attention, cooperation, and imitation.
- (5) Include the following elements:
 - (A) Attending skills (to therapist, adults, and peers).
 - (B) Imitation skills including motor and verbal skills.
 - (C) Receptive and expressive language skills development.
 - (D) Appropriate toy plan.
 - (E) Appropriate social interaction.
- (6) Provide for one-on-one structured therapy.
- (7) Provide for family training.

(8) Emphasize the acquisition of new behaviors.

(c) An applied behavior analysis support plan can only be developed for an individual between two (2) years of age and seven (7) years of age. (*Division of Disability, Aging, and Rehabilitative Services; 460 IAC 6-35-2; filed Aug 29, 2003, 10:30 a.m.: 27 IR 115*)

460 IAC 6-35-3 Written policy and procedure standards

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-11-1.1-9; IC 12-11-2.1-12

Affected: IC 12-11-1.1; IC 12-11-2.1

Sec. 3. An applied behavior analysis services provider shall have written policies and procedures that meet the standards set out in 460 IAC 6-18-3. (*Division of Disability, Aging, and Rehabilitative Services; 460 IAC 6-35-3; filed Aug 29, 2003, 10:30 a.m.: 27 IR 115*)

460 IAC 6-35-4 Documentation standards

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-11-1.1-9; IC 12-11-2.1-12

Affected: IC 12-11-1.1; IC 12-11-2.1

Sec. 4. An applied behavior analysis services provider shall adhere to the documentation standards set out in 460 IAC 6-18-4. (*Division of Disability, Aging, and Rehabilitative Services; 460 IAC 6-35-4; filed Aug 29, 2003, 10:30 a.m.: 27 IR 115*)

460 IAC 6-35-5 Senior therapist standards

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-11-1.1-9; IC 12-11-2.1-12

Affected: IC 12-11-1.1; IC 12-11-2.1

Sec. 5. If a senior therapist has a direct role in training and supervising the applied behavior analysis services provided to an individual, the senior therapist shall be supervised by a lead therapist. (*Division of Disability, Aging, and Rehabilitative Services; 460 IAC 6-35-5; filed Aug 29, 2003, 10:30 a.m.: 27 IR 115*)

460 IAC 6-35-6 Line staff standards

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-11-1.1-9; IC 12-11-2.1-12

Affected: IC 12-11-1.1; IC 12-11-2.1

Sec. 6. (a) All line staff providing applied behavior analysis services to an individual shall be supervised by a lead therapist and a senior therapist.

(b) All line staff shall be recruited by either the lead therapist or the individual's family. (*Division of Disability, Aging, and Rehabilitative Services; 460 IAC 6-35-6; filed Aug 29, 2003, 10:30 a.m.: 27 IR 116*)

460 IAC 6-35-7 Implementation of applied behavior analysis support plan

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-11-1.1-9; IC 12-11-2.1-12

Affected: IC 12-11-1.1; IC 12-11-2.1

Sec. 7. All providers working with an individual shall implement that applied behavior analysis support plan designed by the individual's behavior analysis support services provider. (*Division of Disability, Aging, and Rehabilitative Services; 460 IAC 6-35-7; filed Aug 29, 2003, 10:30 a.m.: 27 IR 116*)

460 IAC 6-35-8 Human rights committee

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-11-1.1-9; IC 12-11-2.1-12

Affected: IC 12-11-1.1; IC 12-11-2.1

Sec. 8. Beginning July 1, 2004, a provider of applied behavior analysis support services who:

- (1) prepares an applied behavior analysis support plan; or
- (2) implements an applied behavior analysis support plan;

shall cooperate with the division's or the BDDS's regional human rights committee for the geographic area in which the provider is providing services under this article. (*Division of Disability, Aging, and Rehabilitative Services; 460 IAC 6-35-8; filed Aug 29, 2003, 10:30 a.m.: 27 IR 116*)

Rule 36. Code of Ethics

460 IAC 6-36-1 Applicability

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-11-1.1-9; IC 12-11-2.1-12
Affected: IC 12-11-1.1; IC 12-11-2.1

Sec. 1. This rule applies to all providers of supported living services and supports. (*Division of Disability, Aging, and Rehabilitative Services; 460 IAC 6-36-1; filed Apr 16, 2004, 10:00 a.m.: 27 IR 2726*)

460 IAC 6-36-2 Code of ethics

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-11-1.1-9; IC 12-11-2.1-12
Affected: IC 12-11-1.1; IC 12-11-2.1

Sec. 2. A provider, in the provision of services under this article, shall abide by the following code of ethics:

- (1) A provider shall provide professional services with objectivity and with respect for the unique needs and values of the individual being provided services.
- (2) A provider shall avoid discrimination on the basis of factors that are irrelevant to the provision of services, including, but not limited to:
 - (A) race;
 - (B) creed;
 - (C) gender;
 - (D) age; or
 - (E) disability.
- (3) A provider shall provide sufficient objective information to enable an individual, or the individual's guardian, to make informed decisions.
- (4) A provider shall accurately present professional qualifications and credentials.
- (5) A provider shall accurately present professional qualifications of all employees or agents.
- (6) A provider shall require all employees or agents to assume responsibility and accountability for personal competence in the practice of the person's profession and in the provision of services under this article.
- (7) A provider shall require employees or agents to maintain knowledge and skills required for continued professional competence including all requirements necessary for a licensed or accredited professional to maintain the professional's licensure or accreditation.
- (8) A provider shall require professional, licensed, or accredited employees or agents to adhere to acceptable standards for the employee or agent's area of professional practice.
- (9) A provider shall require employees or agents to comply with all laws and regulations governing a licensed or accredited person's profession.
- (10) A provider shall require all employees or agents to maintain the confidentiality of individual information consistent with the standards of this article and all other laws and regulations governing confidentiality of individual information.
- (11) A provider shall require all employees or agents to conduct all practice with honesty, integrity, and fairness.
- (12) A provider shall require all employees or agents to fulfill professional commitments in good faith.
- (13) A provider shall require all employees or agents to inform the public and colleagues of services by use of factual information.
- (14) A provider shall not advertise or market services in a misleading manner.
- (15) A provider providing services shall not engage in uninvited solicitation of potential clients, who are vulnerable to undue

influence, manipulation, or coercion.

(16) A provider shall make reasonable efforts to avoid bias in any kind of professional evaluation.

(17) A provider shall notify the appropriate party, which may include:

- (A) the division;
- (B) the Indiana state department of health;
- (C) a licensing authority;
- (D) an accrediting agency;
- (E) an employer;
- (F) the office of the attorney general, consumer protection division;

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 6-36-2; filed Apr 16, 2004, 10:00 a.m.: 27 IR 2726)

ARTICLE 7. INDIVIDUALIZED SUPPORT PLAN

Rule 1. Purpose

460 IAC 7-1-1 Purpose

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-11-2.1-12

Affected: IC 12-11-1.1; IC 12-11-2.1

Sec. 1. The purpose of this article is to establish standards and requirements for individualized support plans for service plans developed by the bureau of developmental disabilities services for eligible individuals with a developmental disability. *(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 7-1-1; filed Apr 21, 2003, 9:20 a.m.: 26 IR 2870)*

Rule 2. Applicability

460 IAC 7-2-1 Applicability

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-11-2.1-12

Affected: IC 12-11-1.1; IC 12-11-2.1

Sec. 1. This article applies to the development of ISPs for individuals receiving services under an individualized support plan through the bureau of developmental disabilities services. *(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 7-2-1; filed Apr 21, 2003, 9:20 a.m.: 26 IR 2870)*

Rule 3. Definitions

460 IAC 7-3-1 Applicability

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-11-2.1-12

Affected: IC 12-11-1.1; IC 12-11-2.1

Sec. 1. The definitions in this rule apply throughout this article. *(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 7-3-1; filed Apr 21, 2003, 9:20 a.m.: 26 IR 2870)*

460 IAC 7-3-2 "BDDS" defined

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-11-1.1-9; IC 12-11-2.1-12

Affected: IC 12-11-1.1; IC 12-11-2.1

Sec. 2. "BDDS" means the bureau of developmental disabilities services. *(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 7-3-2; filed Apr 21, 2003, 9:20 a.m.: 26 IR 2870)*

460 IAC 7-3-3 “Facilitator” defined

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-11-1.1-9; IC 12-11-2.1-12
Affected: IC 12-11-1.1; IC 12-11-2.1

Sec. 3. “Facilitator” means the person who leads the individual’s support team through the person centered planning process, which includes developing an ISP. (*Division of Disability, Aging, and Rehabilitative Services; 460 IAC 7-3-3; filed Apr 21, 2003, 9:20 a.m.: 26 IR 2870*)

460 IAC 7-3-4 “Goal” defined

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-11-1.1-9; IC 12-11-2.1-12
Affected: IC 12-11-1.1; IC 12-11-2.1

Sec. 4. “Goal” means an endpoint of instruction. (*Division of Disability, Aging, and Rehabilitative Services; 460 IAC 7-3-4; filed Apr 21, 2003, 9:20 a.m.: 26 IR 2870*)

460 IAC 7-3-5 “ICF/MR” defined

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-11-1.1-9; IC 12-11-2.1-12
Affected: IC 12-11-1.1; IC 12-11-2.1

Sec. 5. “ICF/MR” means a facility certified under Title XIX of the Social Security Act (42 U.S.C. 1396 et seq.) as an intermediate care facility for the mentally retarded. (*Division of Disability, Aging, and Rehabilitative Services; 460 IAC 7-3-5; filed Apr 21, 2003, 9:20 a.m.: 26 IR 2870*)

460 IAC 7-3-6 “Individual” defined

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-11-1.1-9; IC 12-11-2.1-12
Affected: IC 12-11-1.1; IC 12-11-2.1-1

Sec. 6. “Individual” means an individual with a developmental disability who has been determined eligible for services by a service coordinator pursuant to IC 12-11-2.1-1. (*Division of Disability, Aging, and Rehabilitative Services; 460 IAC 7-3-6; filed Apr 21, 2003, 9:20 a.m.: 26 IR 2871*)

460 IAC 7-3-7 “Individualized support plan” or “ISP” defined

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-11-2.1-12
Affected: IC 12-11-1.1; IC 12-11-2.1

Sec. 7. “Individualized support plan” or “ISP” means a plan that establishes supports and strategies intended to accomplish the individual’s long term and short term outcomes by accommodating the financial and human resources offered to the individual through paid provider services or volunteer services, or both, as designed and agreed upon by the individual’s support team. (*Division of Disability, Aging, and Rehabilitative Services; 460 IAC 7-3-7; filed Apr 21, 2003, 9:20 a.m.: 26 IR 2871*)

460 IAC 7-3-8 “Legal representative” defined

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-11-1.1-9; IC 12-11-2.1-12
Affected: IC 12-10-13-3.3; IC 12-11-1.1; IC 12-11-2.1

Sec. 8. “Legal representative” has the meaning set forth in IC 12-10-13-3.3. (*Division of Disability, Aging, and Rehabilitative Services; 460 IAC 7-3-8; filed Apr 21, 2003, 9:20 a.m.: 26 IR 2871*)

460 IAC 7-3-9 “Legal status” defined

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-11-1.1-9; IC 12-11-2.1-12
Affected: IC 12-11-1.1; IC 12-11-2.1

Sec. 9. "Legal status" means an indication of whether or not the individual is a subject of a guardianship or some other protective proceeding or is a minor. (*Division of Disability, Aging, and Rehabilitative Services; 460 IAC 7-3-9; filed Apr 21, 2003, 9:20 a.m.: 26 IR 2871*)

460 IAC 7-3-10 "Objective" defined

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-11-1.1-9; IC 12-11-2.1-12
Affected: IC 12-11-1.1; IC 12-11-2.1

Sec. 10. "Objective" means a specifiable intermediate point toward a goal. (*Division of Disability, Aging, and Rehabilitative Services; 460 IAC 7-3-10; filed Apr 21, 2003, 9:20 a.m.: 26 IR 2871*)

460 IAC 7-3-11 "Outcome" defined

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-11-1.1-9; IC 12-11-2.1-12
Affected: IC 12-11-1.1; IC 12-11-2.1

Sec. 11. "Outcome" means a statement of the individual's desires for the near future, which is based upon the individual's preferences, desires, and needs identified in the person centered planning process. An outcome is a common vision of what the support team is working together to accomplish. (*Division of Disability, Aging, and Rehabilitative Services; 460 IAC 7-3-11; filed Apr 21, 2003, 9:20 a.m.: 26 IR 2871*)

460 IAC 7-3-12 "Person centered planning" or "PCP" defined

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-11-1.1-9; IC 12-11-2.1-12
Affected: IC 12-11-1.1; IC 12-11-2.1

Sec. 12. "Person centered planning" or "PCP" means a process that:

- (1) allows an individual, the individual's legal representative, if applicable, and any other person chosen by the individual to direct the planning and allocation of resources to meet the individual's life goals;
- (2) achieves understanding of how an individual:
 - (A) learns;
 - (B) makes decisions; and
 - (C) is and can be productive;
- (3) discovers what the individual likes and dislikes; and
- (4) empowers an individual and the individual's family to create a life plan and corresponding ISP for the individual that:
 - (A) is based on the individual's preferences, dreams, and needs;
 - (B) encourages and supports the individual's long term hopes and dreams;
 - (C) is supported by a short term plan that is based on reasonable costs, given the individual's support needs;
 - (D) includes individual responsibility; and
 - (E) includes a range of supports, including funded, community, and natural supports.

(*Division of Disability, Aging, and Rehabilitative Services; 460 IAC 7-3-12; filed Apr 21, 2003, 9:20 a.m.: 26 IR 2871*)

460 IAC 7-3-13 "Profile information" defined

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-11-1.1-9; IC 12-11-2.1-12
Affected: IC 12-11-1.1; IC 12-11-2.1

Sec. 13. "Profile information" means a summary of the information developed through the person centered planning process that is attached to the ISP. (*Division of Disability, Aging, and Rehabilitative Services; 460 IAC 7-3-13; filed Apr 21, 2003, 9:20 a.m.: 26 IR 2871*)

460 IAC 7-3-14 “Provider” defined

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-11-1.1-9; IC 12-11-2.1-12
Affected: IC 12-11-1.1; IC 12-11-2.1

Sec. 14. “Provider” means a person or entity approved by the BDDS to provide the individual with agreed upon services. (*Division of Disability, Aging, and Rehabilitative Services; 460 IAC 7-3-14; filed Apr 21, 2003, 9:20 a.m.: 26 IR 2871*)

460 IAC 7-3-15 “Qualified mental retardation professional” or “QMRP” defined

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-11-1.1-9; IC 12-11-2.1-12
Affected: IC 12-11-1.1; IC 12-11-2.1

Sec. 15. “Qualified mental retardation professional” or “QMRP” means a staff of an ICF/MR who meets the qualifications and functions contained in 42 CFR 483.430(a). (*Division of Disability, Aging, and Rehabilitative Services; 460 IAC 7-3-15; filed Apr 21, 2003, 9:20 a.m.: 26 IR 2872*)

460 IAC 7-3-16 “Service coordinator” defined

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-11-1.1-9; IC 12-11-2.1-12
Affected: IC 12-11-1.1; IC 12-11-2.1

Sec. 16. “Service coordinator” means a service coordinator employed by the BDDS under IC 12-11-2.1. (*Division of Disability, Aging, and Rehabilitative Services; 460 IAC 7-3-16; filed Apr 21, 2003, 9:20 a.m.: 26 IR 2872*)

460 IAC 7-3-17 “Support team” defined

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-11-1.1-9; IC 12-11-2.1-12
Affected: IC 12-11-1.1; IC 12-11-2.1

Sec. 17. “Support team” means a team of persons, including an individual, the individual’s legal representative, if applicable, an individual’s providers, provider of case management services, and other persons who:

- (1) are designated by the individual;
- (2) know and work with the individual; and
- (3) participate in the development and implementation of the individual’s ISP.

(*Division of Disability, Aging, and Rehabilitative Services; 460 IAC 7-3-17; filed Apr 21, 2003, 9:20 a.m.: 26 IR 2872*)

Rule 4. Development of an ISP

460 IAC 7-4-1 Development of an ISP

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-11-1.1-9; IC 12-11-2.1-12
Affected: IC 12-11-1.1; IC 12-11-2.1

Sec. 1. (a) An ISP shall be developed by an individual’s support team using a “person centered planing” process. The support team shall be led by a facilitator chosen by the individual.

(b) The support team shall be led by a trained facilitator chosen by the individual to collect and complete the profile information of the person centered planning process and development of the ISP.

(c) Before functioning as a facilitator of the person centered planning process a facilitator shall:

- (1) complete a training provided by a BDDS approved training entity or person;
- (2) observe a facilitation; and
- (3) participate in a person centered planning meeting.

(*Division of Disability, Aging, and Rehabilitative Services; 460 IAC 7-4-1; filed Apr 21, 2003, 9:20 a.m.: 26 IR 2872*)

460 IAC 7-4-2 Collection of information

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-11-1.1-9; IC 12-11-2.1-12
Affected: IC 12-11-1.1; IC 12-11-2.1

Sec. 2. The support team shall collect all the information required to complete the ISP. In collecting the information needed to complete the ISP, the team shall be cognizant of the past, present, and future influences of a variety of factors that define the individual's quality of life. (*Division of Disability, Aging, and Rehabilitative Services; 460 IAC 7-4-2; filed Apr 21, 2003, 9:20 a.m.: 26 IR 2872*)

460 IAC 7-4-3 Composition of the support team

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-11-1.1-9; IC 12-11-2.1-12
Affected: IC 12-11-1.1; IC 12-11-2.1

Sec. 3. (a) The support team shall include, as appropriate, the following persons, as designated by the individual:

- (1) The individual.
- (2) His or her legal guardian, if applicable.
- (3) Close family members/advocates.
- (4) The provider providing case management services to the individual.
- (5) Providers providing services to the individual.
- (6) A BDDS service coordinator.
- (7) Others identified by the individual as being important in his or her life.

(b) The responsibility for assuring the convening of the individual's support team, the development of the ISP, the dissemination of the ISP to the support team, and maintenance of the original documents shall be the responsibility of:

- (1) the provider providing case management services to the individual if the individual receives case management services;
- (2) the individual's QMRP if the individual is receiving services in an ICF/MR; or
- (3) the BDDS service coordinator if the individual does not receive case management services or is not receiving services in an ICF/MR.

If an individual is receiving services in an ICF/MR and a ISP is not in place, the individual's service coordinator shall work with the individual's QMRP to assure development of an ISP. (*Division of Disability, Aging, and Rehabilitative Services; 460 IAC 7-4-3; filed Apr 21, 2003, 9:20 a.m.: 26 IR 2872*)

460 IAC 7-4-4 Written ISP

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-11-1.1-9; IC 12-11-2.1-12
Affected: IC 12-11-1.1; IC 12-11-2.1

Sec. 4. The support team shall develop a written ISP that contains all of the sections required by 460 IAC 7-5. A profile sheet shall be attached to the ISP. (*Division of Disability, Aging, and Rehabilitative Services; 460 IAC 7-4-4; filed Apr 21, 2003, 9:20 a.m.: 26 IR 2873*)

460 IAC 7-4-5 Updating the ISP

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-11-1.1-9; IC 12-11-2.1-12
Affected: IC 12-11-1.1; IC 12-11-2.1

Sec. 5. The ISP shall be updated:

- (1) whenever a change in the individual's condition or circumstances warrants the updating the individual's ISP; or
- (2) annually.

(*Division of Disability, Aging, and Rehabilitative Services; 460 IAC 7-4-5; filed Apr 21, 2003, 9:20 a.m.: 26 IR 2873*)

Rule 5. Sections of an ISP

460 IAC 7-5-1 Sections of an ISP

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-11-1.1-9; IC 12-11-2.1-12
Affected: IC 12-11-1.1; IC 12-11-2.1

Sec. 1. An ISP shall have the following sections:

- (1) Personal and demographic information section.
- (2) Individual's diagnosis section.
- (3) Individual's emergency contacts section.
- (4) Outcome section.
- (5) Statement of agreement section.
- (6) Individualized support plan participants section.
- (7) Meeting issues and requirements section.
- (8) An optional attachment regarding resources.

(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 7-5-1; filed Apr 21, 2003, 9:20 a.m.: 26 IR 2873)

460 IAC 7-5-2 Personal and demographic information section

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-11-1.1-9; IC 12-11-2.1-12
Affected: IC 12-11-1.1; IC 12-11-2.1

Sec. 2. The personal and demographic information section shall contain the following:

- (1) The individual's last name, first name, and middle initial.
- (2) The individual's address.
- (3) The individual's date of birth.
- (4) If applicable, the individual's Medicaid recipient number.
- (5) The individual's legal status.
- (6) The individual's current living arrangement.
- (7) The individual's Social Security number.
- (8) The individual's medical insurance information.
- (9) An indication of whether or not the individual is in school, is employed, or has another daily routine. If the individual has another daily routine, the daily routine shall be described.

(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 7-5-2; filed Apr 21, 2003, 9:20 a.m.: 26 IR 2873)

460 IAC 7-5-3 Diagnosis section

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-11-1.1-9; IC 12-11-2.1-12
Affected: IC 12-11-1.1; IC 12-11-2.1

Sec. 3. The diagnosis section shall identify the individual's primary diagnosis, and, if applicable, a secondary diagnosis.

(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 7-5-3; filed Apr 21, 2003, 9:20 a.m.: 26 IR 2873)

460 IAC 7-5-4 Emergency contacts section

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-11-1.1-9; IC 12-11-2.1-12
Affected: IC 12-11-1.1; IC 12-11-2.1

Sec. 4. The emergency contacts section shall contain the name, phone number, relationship, addresses, and an alternate contact method for any emergency contacts for the individual. *(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 7-5-4; filed Apr 21, 2003, 9:20 a.m.: 26 IR 2873)*

460 IAC 7-5-5 Outcome section

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-11-1.1-9; IC 12-11-2.1-12
Affected: IC 12-11-1.1; IC 12-11-2.1

Sec. 5. (a) The outcome section shall include all outcomes for the individual.

(b) Each outcome listed in the ISP shall contain the following:

(1) The desired outcome for the individual.

(2) The individual's current status regarding attainment of the outcome. Current status information shall be based upon the support team's discussions during the development of the ISP and a review of relevant documentation.

(3) The individual's past experience with the outcome. Past experience information shall be based upon the support team's discussions during the development of the ISP and a review of relevant documentation.

(4) Proposed strategies and activities for meeting and attaining the outcome, including the following:

(A) Multiple strategies can be used to meet more than one (1) outcome.

(B) Preferred strategies shall be assessed through discussion during the development of the ISP and shall include input from the individual and the individual's guardian or family members, or both.

Each strategy shall be clearly outlined and include all related information.

(5) The party or parties, paid or unpaid, responsible for assisting the individual in meeting the outcome. A responsible party cannot be changed unless the support team is reconvened and the ISP is amended to reflect a change in responsible party.

(6) Time frame for accomplishment of the outcome, which shall not exceed one (1) year.

(c) An area for progress notes shall be included for each outcome. Information can be added in this area, at any time during the life of the ISP, identifying progress made in meeting the desired outcome. (*Division of Disability, Aging, and Rehabilitative Services; 460 IAC 7-5-5; filed Apr 21, 2003, 9:20 a.m.: 26 IR 2873*)

460 IAC 7-5-6 Statement of agreement section

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-11-1.1-9; IC 12-11-2.1-12

Affected: IC 12-11-1.1; IC 12-11-2.1

Sec. 6. The statement of agreement section shall contain the following sentence: "I have been involved in the development of my Individualized Support Plan and I agree with this Plan. I know I can appeal to the DDARS if I disagree with how this plan is put into action.". There shall be a signature and date line for the individual to sign. (*Division of Disability, Aging, and Rehabilitative Services; 460 IAC 7-5-6; filed Apr 21, 2003, 9:20 a.m.: 26 IR 2874*)

460 IAC 7-5-7 Individualized support plan participants section

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-11-1.1-9; IC 12-11-2.1-12

Affected: IC 12-11-1.1; IC 12-11-2.1

Sec. 7. (a) The individualized support plan participants section shall list each person participating in the development of the ISP.

(b) The relationship of each participant to the individual shall be indicated.

(c) The date or dates the ISP was forwarded to each participant shall be indicated.

(d) The method by which the ISP was forwarded to the participant shall be indicated. (*Division of Disability, Aging, and Rehabilitative Services; 460 IAC 7-5-7; filed Apr 21, 2003, 9:20 a.m.: 26 IR 2874*)

460 IAC 7-5-8 Meeting issues and requirements section

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-11-1.1-9; IC 12-11-2.1-12

Affected: IC 12-11-1.1; IC 12-11-2.1

Sec. 8. (a) The meeting issues and requirements section shall have a subsection regarding health and behavioral issues as follows:

(1) The health and behavioral issues section shall indicate if a provider is needed to provide health care or behavioral supports and, if a provider is needed to provide either health care or behavioral supports, the provider responsible for providing health care or behavioral supports.

(2) Health and behavioral issues included in health and behavioral issues section shall include, as applicable, the following:

(A) Seizures or history of seizures.

- (B) Allergies or history of allergies.
 - (C) Uses or requires dentures.
 - (D) Chewing difficulties.
 - (E) Swallowing difficulties.
 - (F) Dining difficulties.
 - (G) Vision difficulties.
 - (H) Hearing difficulties.
 - (I) Speaking difficulties or the individual's mode of communication.
 - (J) Behavior issues.
 - (K) Health or behavior issue identified as a result of a review of incident reports concerning the individual.
 - (L) Medication or self medication issues, or both.
 - (M) Results of laboratory testing.
 - (N) Any other chronic condition or healthcare issue.
- (3) The health and behavioral issues section shall identify the following:
- (A) The individual's regular family physician.
 - (B) The individual's dentist.
 - (C) Any specialist with whom the individual consults.
- (4) For each health issue or behavioral issue that is identified, a comment section shall be included that contains a discussion of how the health issue or behavioral issue:
- (A) affects the individual; and
 - (B) is addressed by the ISP.
- (b) The meeting issues and requirements section shall have a subsection identifying any environmental requirements the individual may have, including the following:
- (1) The environmental requirements section shall indicate if a provider is needed to provide environmental and living arrangement supports and, if a provider is needed, the provider responsible for providing environmental and living arrangement supports.
- (2) The environmental requirements section shall include, as applicable, the following:
- (A) The provider responsible for environment and living arrangement supports.
 - (B) Carbon monoxide detectors.
 - (C) Smoke detectors.
 - (D) Emergency phone numbers.
 - (E) Emergency evacuation routes and plan.
 - (F) Fire extinguishers.
 - (G) Insurance.
 - (H) Anti-scaling devices.
 - (I) Devices and home modifications.
 - (J) Personal emergency response system.
 - (K) Need for a photograph in the individual's personal file.
 - (L) Transportation.
 - (M) Individual property and financial resources.
- (3) For each environmental requirement that is identified in the ISP, a comment section shall be included that contains a discussion of how the environmental need:
- (A) affects the individual; and
 - (B) is addressed by the ISP.
- (c) The meeting issues and requirements section shall have a subsection identifying the following provider requirements:
- (1) If the individual is receiving case management services, when the provider providing case management services shall make the first contact with the individual.
 - (2) If the individual is receiving case management services, the minimum frequency of contacts the provider providing case management services shall have with the individual.
 - (3) The provider who is to maintain the individual's personal file.

- (4) How often each provider shall analyze and update the provider's records.
- (5) How often the individual shall be informed of the following:
 - (A) Medical condition.
 - (B) Developmental status.
 - (C) Behavior status.
 - (D) Risk of treatment.
 - (E) Right to refuse treatment.

(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 7-5-8; filed Apr 21, 2003, 9:20 a.m.: 26 IR 2874)

460 IAC 7-5-9 Optional attachment: resources

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-11-1.1-9; IC 12-11-2.1-12
Affected: IC 12-11-1.1; IC 12-11-2.1

Sec. 9. An optional resources attachment regarding resources may be attached to the ISP. If an optional resources attachment is used it may indicate the following:

- (1) The funding supports the individual currently receives.
- (2) The funding supports the support team discussed during the development of the ISP.
- (3) The funding supports the individual does not desire to receive.
- (4) The funding supports for which the individual has applied.
- (5) Any funding supports for which the individual is on a waiting list.

(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 7-5-9; filed Apr 21, 2003, 9:20 a.m.: 26 IR 2875)

ARTICLE 8. ASSISTED LIVING MEDICAID WAIVER SERVICES

Rule 1. Assisted Living Medicaid Waiver Services

460 IAC 8-1-1 Applicability

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; filed Apr 8, 2004, 3:15 p.m.: 27 IR 2489)*

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:
 - (A) mobility;
 - (B) dressing;
 - (C) bathing;
 - (D) eating;
 - (E) toileting; and
 - (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.

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- (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). and
 - (G) Therapeutic social and recreational programming.
- (7) “Assisted living Medicaid waiver services provider” means an entity approved to provided [*sic., 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(s).
- (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” a means 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 licensed nurse; and
 - (D) the provider(s) 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 preset 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:

- (A) eating;
- (B) bathing;
- (C) dressing;
- (D) personal hygiene; and
- (E) 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 provide *[sic., provide]* 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:

- (A) meals;
- (B) a place to sleep;
- (C) laundry; and
- (D) 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 which help a recipient develop skills to increase or maintain level of functioning or which assist the recipient in performing personal care or activities of daily living or individual social activities.

(34) "Supportive services" means services which substitute for the:

- (A) absence;
- (B) loss;
- (C) diminution; or
- (D) impairment;

of a physical or cognitive function.

(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 8-1-2; filed Apr 8, 2004, 3:15 p.m.: 27 IR 2489)

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:
 - (A) Has 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.
 - (B) Has 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; filed Apr 8, 2004, 3:15 p.m.: 27 IR 2491)

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 director 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; filed Apr 8, 2004, 3:15 p.m.: 27 IR 2491)*

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. and
- (D) A kitchenette that contains:
 - (i) a refrigerator;
 - (ii) a food preparation area; and
 - (iii) 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) a refrigerator;
 - (B) a food preparation area; and
 - (C) a microwave. and

(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. and
- (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; filed Apr 8, 2004, 3:15 p.m.: 27 IR 2491*)

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. and
- (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 which 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; filed Apr 8, 2004, 3:15 p.m.: 27 IR 2492*)

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 one (1) being the least impaired and level three (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; filed Apr 8, 2004, 3:15 p.m.: 27 IR 2493*)

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:

(1) promote the ability of recipients to 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:

(A) privacy;

(B) dignity;

- (C) choice;
 - (D) independence;
 - (E) individuality; and
 - (F) decision making ability; and
- (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:
- (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; and
 - (D) limited nursing and medication services, if applicable, including frequency of service and level of assistance;
 - (3) is signed and approved by:
 - (A) the recipient;
 - (B) the provider;
 - (C) the licensed nurse;
 - (D) the case manager; and
 - (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; filed Apr 8, 2004, 3:15 p.m.: 27 IR 2493*)

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:
- (1) an explanation of the cause(s) 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 [*sic., other*] entities will provide to accommodate the recipient's choice or minimize the potential risk; and
 - (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; filed Apr 8, 2004, 3:15 p.m.: 27 IR 2493*)

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. and
- (3) A written report of all significant incidents relating to the health or safety of a recipient including:
 - (A) how and when the incident occurred;
 - (B) who was involved;
 - (C) what action was taken by provider staff; and
 - (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) Division.
- (4) Recipients.
- (5) 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. and
- (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; filed Apr 8, 2004, 3:15 p.m.: 27 IR 2494*)

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 which 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:
 - (A) recipients;
 - (B) recipients' designated representatives; and
 - (C) 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:

- (A) suspected abuse;
- (B) neglect;
- (C) exploitation; or
- (D) 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:

- (A) observing and interviewing recipients; and
- (B) accessing recipient records.

(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 8-1-11; filed Apr 8, 2004, 3:15 p.m.: 27 IR 2494)

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; filed Apr 8, 2004, 3:15 p.m.: 27 IR 2495)*

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