

Rule No. 560-X-43-.01 Authority and Purpose

(1) Home and Community-Based Services (HCBS) for persons with intellectual disabilities are provided by the Alabama Medicaid Agency to persons who are Medicaid-eligible under the Home and Community-Based Services Community Waiver Program (CWP) for Persons with Intellectual Disabilities requirements and who would, but for the provision of such HCBS, require the level of care available in an intermediate care facility for individuals with intellectual disabilities (ICF/IID). These HCBS are provided through a Medicaid waiver under provisions of the Omnibus Budget Reconciliation Act of 1981, which added Section 1915(c) to the Social Security Act for an initial period of three years and renewal periods of five years.

(2) The HCBS covered in the CWP Waiver are Breaks and Opportunities (Respite) Services, Community- Based Residential Services, Integrated Employment Path Services, Personal Assistance- Home Services, Support Coordination Services, Adult Family Home Services, Assistive Technology and Adaptive Aids Services, Co- Worker Supports Services, Community Integration Connections and Skills Training Services, Community Transportation Services, Family Empowerment and Systems Navigation Counseling Services, Financial Literacy Services, Housing Counseling Services, Housing Start-Up Assistance Services, Independent Living Skills Training Services, Individual Directed Goods and Services, Minor Home Modifications Services, Natural Support or Caregiver Education and Training Services, Occupational Therapy Services, Peer Specialist Services, Personal Assistance- Community Services, Physical Therapy Services, Positive Behavioral Supports Services, Remote Supports Services, Skilled Nursing Services, Speech and Language Therapy Services, Supported Employment Individual Services, Supported Employment Small Group Services, Supported Living Services. These HCBS, provided through a Medicaid 1115 waiver, provide assistance necessary to ensure optimal functioning of individuals with intellectual disabilities.

(3) The CWP Waiver is administered with a cooperative effort between the Alabama Medicaid Agency and the Alabama Department of Mental Health. The HCBS under the CWP Waiver are limited to individuals with a diagnosis of an intellectual disability, age 3 and above.

(4) Home and Community-Based Services for the CWP Waiver are provided in compliance with the provisions of the HCBS Settings Final Rule (CMS 2249-F/2296- F). These provisions require the following:

(a.) Services may only be provided in settings that:

1. Are integrated in and support full access to the greater community, including opportunities to seek employment and work in competitive integrated settings, engage in community life, control personal resources, and receive services in the community, to the same degree of access as individuals not receiving Medicaid HCBS;

2. Are selected by the individual from among setting options;

3. Ensure individual rights of privacy, dignity and respect, and freedom from coercion and restraint.

4. Optimize autonomy and independence in making life choices including but not limited to, daily activities, physical environment, and with whom to interact

5. Facilitate choice regarding services and who provides them.

(b.) A compliant provider-owned or controlled residential setting will also be

physically accessible to the individual, and, in addition to the above requirements, meet all of the following requirements:

1. The unit or dwelling is a specific physical place that can be owned, rented, or occupied under a legally enforceable agreement by the individual receiving services, and the individual has, at a minimum, the same responsibilities, and protections from eviction that tenants have under the landlord/tenant law of the State, county, city, or other designated entity. For settings in which landlord tenant laws do not apply, the State must ensure that a lease, residency agreement or other form of written agreement will be in place for each HCBS participant, and that the document provides protections that address eviction processes and appeals comparable to those provided under the jurisdiction's landlord tenant law.

2. Each individual has privacy in their sleeping or living unit: Units have entrance doors lockable by the individual, with only appropriate staff having keys to doors. Individuals sharing units have a choice of roommates in that setting. Individuals have the freedom to furnish and decorate their sleeping or living units within the lease or other agreement. Individuals have the freedom and support to control their own schedules and activities, and have access to food at any time. Individuals are able to have visitors of their choosing at any time.

3. Modifications to any of the additional requirements for provider owned or controlled residential setting listed above must be:

- (i) Supported by specific assessed need
- (ii) Justified in the person-centered service plan
- (iii) Documented in the person-centered service plan, which must

include:

- (I) Specific individualized assessed need
- (II) Prior interventions and supports including less intrusive

methods

- (III) Description of condition proportionate to assessed need
- (IV) Ongoing data measure effectiveness of modification
- (V) Established time limits for periodic review of modifications
- (VI) Individual informed consent
- (VII) Assurance that interventions and supports will not cause

harm

(c.) Services may not be provided in:

1. Excluded settings that include nursing facilities, institutions for mental disease, intermediate care facilities for individuals with intellectual disabilities, and hospitals.

2. Presumed institutional settings that include those in a publicly or privately-owned facility that provides inpatient treatment; on the grounds of, or immediately adjacent to, a public institution; or that have the effect of isolating individuals receiving Medicaid-funded HCBS from the broader community of individuals not receiving Medicaid-funded HCBS.

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Statutory Authority: Section 1915(c) Social Security Act; 42 C.F.R. Section 441, Subpart G; and the Home and Community-Based Waiver for Persons with Intellectual Disabilities.

History: New Rule: Filed March 21, 2022; Effective May 15, 2022. **Amended:** Filed January 20, 2023;