

TRANSMITTAL SHEET FOR
NOTICE OF INTENDED ACTION

Control No: 560 Department or Agency: Alabama Medicaid Agency

Rule No: 560-X-35-.02

Rule Title: Description of Services
 New Rule; X Amend; Repeal; Adoption by Reference

Would the absence of the proposed rule significantly harm or endanger the public health, welfare, or safety? no

Is there a reasonable relationship between the state's police power and the protection of the public health, safety, or welfare? yes

Is there another, less restrictive method of regulation available that could adequately protect the public? no

Does the proposed rule have the effect of directly or indirectly increasing the costs of any goods or services involved and, if so, to what degree? no

Is the increase in cost, if any, more harmful to the public than the harm that might result from the absence of the proposed rule? no

Are all facets of the rulemaking process designed solely for the purpose of, and so they have, as their primary effect, the protection of the public? yes

Does the proposed rule have any economic impact? no

If the proposed rule has an economic impact, the proposed rule is required to be accompanied by a fiscal note prepared in accordance with subsection (f) of Section 41-22-23, Code of Alabama 1975.

Certification of Authorized Official

I certify that the attached proposed rule has been proposed in full compliance with the requirements of Chapter 22, Title 41, Code of Alabama 1975 and that it conforms to all applicable filing requirements of the Administrative Procedure Division of the Legislative Reference Service.

Signature of certifying officer: Stephanie Lindsay

Date: 4/20/12

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PUBLISHED IN VOLUME ISSUE NO.

EDITED AND APPROVED BY DOCUMENT NO.

ALABAMA MEDICAID AGENCY

NOTICE OF INTENDED ACTION

RULE NO. & TITLE: 560-X-35-.02 – Description of Services

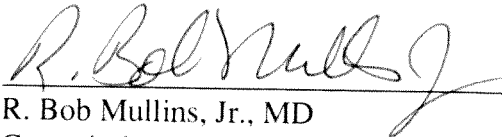
INTENDED ACTION: Amend 560-X-35-.02(1)(g), (2)(f), (3)(d)(e), (12)(f), (14)(b), (15)(b), (17)(h)(i), (18)(i).

SUBSTANCE OF PROPOSED ACTION: The above-referenced rule is being amended to remove Mental Retardation from the name of the Department of Mental Health and Mental Retardation, adds a new level of Day Habilitation, and adds self-directed services for Personal Care, Skilled Nursing, and Community Specialist.

TIME, PLACE, MANNER OF PRESENTING VIEWS: Written or oral comments may be submitted to the Alabama Medicaid Agency, 501 Dexter Avenue, Post Office Box 5624, Montgomery, Alabama 36103-5624, 334-242-5833. Agency business hours are 8:00 a.m. to 5:00 p.m. Monday through Friday.

FINAL DATE FOR COMMENT AND COMPLETION OF NOTICE: Written/Oral comments concerning this change must be received by the Alabama Medicaid Agency no later than June 5, 2012.

CONTACT PERSON AT AGENCY: Stephanie Lindsay, Administrative Secretary, Alabama Medicaid Agency, 501 Dexter Avenue, Post Office Box 5624, Montgomery, Alabama 36103-5624.


R. Bob Mullins, Jr., MD
Commissioner

Rule No. 560-X-35-.02. Description of Services.

Home and Community-Based Services (HCBS) are defined as Title XIX Medicaid-funded services provided to mentally retarded individuals or persons with related conditions who, without these services, would require services in an ICF/MR. These services will provide health, social, and related support needed to ensure optimal functioning of the mentally retarded individual within a community setting. The administering agency may provide or subcontract for any services provided in this waiver. To qualify for Medicaid reimbursement each individual service must be necessary to prevent institutionalization. Each provider of services must have a signed provider contract, meet provider qualifications and comply with all applicable state and federal laws and regulations. Services that are reimbursable through Medicaid's EPSDT Program shall not be reimbursed as waiver services. The specific services available as part of Home and Community-Based services are:

(1) Residential Habilitation Training

(a) Residential habilitation training provides intensive habilitation training including training in personal, social, community living, and basic life skills.

(b) Staff may provide assistance/training in daily living activities such as shopping for food, meal planning and preparation, housekeeping, personal grooming and cleanliness.

(c) This service includes social and adaptive skill building activities such as expressive therapy, the prescribed use of art, music, drama, and/or movement to modify ineffective learning patterns, and/or influence changes in behavior recreation/leisure instruction, teaching the skills necessary for independent pursuit of leisure time/recreation activities.

(d) The cost to transport individuals to activities such as day programs, social events or community activities when public transportation and/or transportation services covered under the State Plan are not available, accessible or desirable due to the functional limitations of the recipient will be included in the rate paid to providers for this service.

(e) Residential Habilitation Training services may be delivered/supervised by a Qualified Mental Retardation Professional (QMRP) in accordance with the individual's plan of care.

(f) Residential Habilitation Training services can also be delivered by a Habilitation Aide. The aide will work under supervision and direction of a Qualified Mental Retardation Professional.

(g) A Habilitation Aide will be required to be certified by the provider agency as having completed a course of instruction provided or approved by the Department of Mental Health/~~Mental Retardation~~. Retraining will be conducted as needed, at least annually.

(2) Residential Habilitation - Other Living Arrangement (OLA)

(a) Residential habilitation training in other living arrangements is a service in which recipients reside in integrated living arrangements such as their own apartments or homes. These services shall be delivered in the context of routine day-to-day living rather than in isolated "training programs" that dictate the individual transfers what is learned to more relevant applications. Habilitation may range from a situation where a staff member resides on the premises to those situations with staff monitoring of clients served at periodic intervals. The basic concept of this service is that learning to be independent is best accomplished for some individuals by living independently.

(b) The staff may provide assistance/training in daily living activities such as shopping for food, meal planning and preparation, housekeeping, personal grooming and cleanliness.

(c) This service includes social and adaptive skill building activities such as expressive therapy, the prescribed use of art, music, drama, or movement to modify ineffective learning patterns, and/or influence changes in behavior, recreation/leisure instruction, teaching the skills necessary for independent pursuit of leisure time/recreation activities.

(d) Residential habilitation training services for individuals in other living arrangements may be delivered/supervised by a QMRP in accordance with the individual's plan of care.

(e) Residential habilitation training can also be delivered by a Habilitation Aide. The aide will work under supervision and direction of a QMRP.

(f) A Habilitation Aide will be required to be certified by the provider agency as having completed a course of instruction provided or approved by the Department of Mental Health/~~Mental Retardation~~. Retraining will be conducted as needed, but at least annually.

(g) The cost to transport individuals to activities such as day programs, social events or community activities when public transportation and/or transportation services covered under the State Plan are not available, accessible or desirable due to the functional limitations of the client will be included in the rate paid to providers for this service.

(3) Day Habilitation

(a) Day Habilitation is assistance with acquisition, retention, or improvement in self-help, socialization and adaptive skills which takes place in a non-residential setting, separate from the home or facility in which the recipient resides.

(b) The provider for Day Habilitation services can be reimbursed based on eight levels of services.

(c) Services shall normally be furnished four or more hours per day on a regularly scheduled basis, for one or more days per week, unless provided as an adjunct to other day activities included in the recipient's plan of care. Day Habilitation services shall focus on enabling the individual to attain his or her maximum functional level, and shall be coordinated with any physical, occupational, or speech therapies listed in the plan of care.

(d) This service offers another mechanism by which a participant can attend day habilitation part of a day, and work in a supported employment setting with an individual job coach during the same day.

~~(d)~~ (e) Transportation cost associated with transporting individuals to places such as day programs, social events or community activities when public transportation and/or transportation covered under the State Plan is not available, accessible or desirable due to the functional limitations of the recipient will be included in the rate paid to providers for this service. Day Habilitation service workers may transport consumers in their own vehicles as an incidental component of this service. Providers of day habilitation must be certified by the Department of Mental Health ~~and Mental Retardation~~.

(4) Prevocational Services

(a) Prevocational services are not available to recipients for eligible benefits under a program funded under Section 110 of the Rehabilitation Act of 1973 or Section 602 (16) and (17) of the Education of the Handicapped Act.

1. Prevocational services are aimed at preparing an individual for paid or unpaid employment, but are not job task oriented.

2. Prevocational services include teaching such concepts as compliance, attendance, task completion, problem solving and safety.

3. Prevocational services are provided to persons not expected to be able to join the general work force or participate in a transitional sheltered workshop within one year (excluding supported employment programs).

4. When compensated, individuals are paid at a rate of less than 50 percent of the minimum wage.

(5) Supported Employment

(a) Supported employment services consist of paid employment for persons for whom competitive employment at or above the minimum wage is unlikely, and who, because of their disabilities, need intensive ongoing support to perform in a work setting.

1. Supported employment is conducted in a variety of settings, particularly work sites in which persons without disabilities are employed.

2. Supported employment also includes activities needed to sustain paid employment by waiver clients, including supervision and training.

3. When supported employment services are provided at a work site in which persons with disabilities are employed, payment will be made only for the adaptations, supervision and training required by waiver recipients as a result of their disabilities, and will not include payment for the supervisory activities rendered as a normal part of the business settings.

4. Supported employment may be provided under the Individual Job Coach and Job Development services to further encourage full integration of waiver participants into worksites where individuals without disabilities are employed.

5. Supported employment services are not available to recipients eligible for benefits under a program funded by either Section 110 of the Rehabilitation Act of 1973, or Section 602 (16) and (17) of the Education of the Handicapped Act.

6. Transportation will be provided between the individual's place of residence and the site of the habilitation services or between habilitation sites (in cases where the individual receives habilitation services in more than one place) as a component part of habilitation services. The cost of this transportation is included in the rate paid to providers of the appropriate type of habilitation services.

(6) Occupational Therapy Services.

(a) Occupational therapy services include the evaluation of an individual to determine level of functioning by applying diagnostic and prognostic tasks and guiding and treating individuals in the prescribed therapy to secure and/or obtain necessary function.

(b) Therapists may also provide consultation and training to staff or caregivers (such as recipient's family and/or foster family).

(c) Services must be prescribed by a physician and provided on an individual basis. The need for service must be documented in the case record. Services must be listed on the care plan, provided and billed in 15 minute increments. Occupational therapy is covered under the State Plan for eligible recipients as a result of an EPSDT screening. Therefore, this service is limited to recipients age 21 and over. Group therapy will not be reimbursed.

(7) Speech and Language Therapy

(a) Speech and language therapy services include screening and evaluation of individuals with speech and hearing impairments.

1. Comprehensive speech and language therapy is prescribed when indicated by screening results.

(b) This service provides treatment for individuals who require speech improvement and speech education. These are specialized programs designed for developing each individual's communication skills in comprehension, including speech, reading, auditory training, and skills in expression.

(c) Therapists may also provide training to staff and caregivers (such as a recipient's family and/or foster family).

(8) Physical Therapy

(a) Physical therapy includes services which assist in the determination of an individual's level of functioning by applying diagnostic and prognostic tasks and providing treatment training programs.

1. Such services preserve and improve abilities for independent function, such as range of motion, strength, tolerance, coordination, and activities of daily living.

2. This service also helps with progressive disabilities through means such as the use of orthotic prosthetic appliances, assistive and adaptive devices, positioning, behavior adaptations and sensory stimulation.

(b) Physical Therapists may also provide consultation and training to staff or caregivers (such as recipient's family and/or foster family).

(9) Behavior Therapy

(a) Behavior therapy services provides systematic functional behavior analysis, behavior support plan (BSP) development, consultation, environmental manipulation and training to implement the BSP for individuals whose maladaptive behaviors are significantly disrupting their progress in habilitation, self direction or community integrations, whose health is at risk, and/or who may otherwise require movement to a more restrictive environment. Behavior therapy may include consultation provided to families, other caretakers, and habilitation services providers. Behavior therapy shall place primary emphasis on the development of desirable adaptive behavior rather than merely the elimination or suppression of undesirable behavior.

(b) A behavior support plan may only be used after positive behavioral approaches have been tried, and its continued use must be reviewed and rejustified in the case record every thirty (30) days. The unit of service is 15 minutes.

(c) The Behavior Therapy waiver service is comprised of two general categories of service tasks. These are (1) development of a BSP and (2) implementation of a BSP. In addition, this waiver service has three service levels: two professional and one technical, each with its own procedure code and rate of payment. The service levels are distinguished by the qualifications of the service provider and by supervision requirements. Both professional and technical level service providers may perform tasks within both service categories, adhering to supervision requirements that are described under provider qualifications.

(d) The two professional service provider levels are distinguished by the qualifications of the therapist. Both require advanced degrees and specialization, but the top level also requires board certification in behavior analysis. The third service provider level is technical and requires that the person providing the service be under supervision to perform behavior therapy tasks. There is a different code and rate for each of the three service provider levels.

(e) Providers of service must maintain a service log that documents specific days on which services are delivered. Group therapy will not be reimbursed.

(f) The maximum units of service per year of both professional and technician level units combined cannot exceed 600 and the maximum units of service of professional level cannot exceed 400.

(10) Companion Services

(a) Companion services are non-medical supervision and socialization, provided to a functionally impaired adult. Companions may assist the individual with such tasks as meal preparation, and shopping, but may not perform these activities as discrete services.

1. The provision of companion services does not entail hands-on medical care.

2. Companions may perform light housekeeping tasks which are incidental to the care and supervision of the recipient.

3. This service is provided in accordance with a therapeutic goal in the plan of care and is not merely diversional in nature.

4. This service must be necessary to prevent institutionalization of the recipient.

(11) Respite Care

(a) Respite care is given to individuals unable to care for themselves on a short term basis because of the absence or need for relief of those persons normally providing the care. Respite care may be provided in the recipient's home, place of residence, or a facility approved by the State which is not a private residence.

(b) Respite care may be provided up to a maximum of 1080 hours or 45 days per waiver year.

(c) This service cannot be provided by a family member.

(d) Out-of-home respite care may be provided in a certified group home or ICF/MR. In addition, if the recipient is less than 21 years of age, out-of-home respite care may be provided in a JCAHO Accredited Hospital or Residential Treatment Facility (RTF). While a recipient is receiving out-of-home respite, no additional Medicaid reimbursement will be made for other services in the institution.

(e) Medicaid reimbursement shall not be claimed for the cost of room and board except when provided as part of respite care furnished in a facility approved by the State that is not a private residence.

(12) Personal Care

(a) Personal care services are services provided to assist residents with activities of daily living such as eating, bathing, dressing, personal hygiene and activities of daily living. Services may include assistance with preparation of meals, but not the cost of the meals themselves. When specified in the plan of care, this service may also include such housekeeping chores as bed-making, dusting and vacuuming, which are essential to the health and welfare of the recipient. Personal care is not available to residents of a group home or other residential setting.

(b) Personal care attendants may transport consumers in their own (the attendant's) vehicles as an incidental component of the personal care service. In order for this component to be reimbursed, the personal care attendant must support the consumer's need to access the community and not merely to provide transportation. The Personal Care Transportation service will provide transportation in the community to shop, attend recreational and civic events, go to work, and participate in *People First* and other community building activities. Additional payment will be made for mileage and the provider's cost of an insurance waiver to cover any harm that might befall the consumer as a result of being transported.

(c) The attendant must have a valid Alabama driver's license and his/her own insurance coverage as required by State law. The provider agency shall assure the attendant has a good driving record and is in-serviced on safety procedures when transporting a consumer.

(d) Personal Care Transportation shall not replace transportation that is already reimbursable under day or residential habilitation nor the Medicaid non-emergency medical transportation program. The planning team must also assure the most cost effective means of transportation which would include public transportation where available. Transportation by a personal care attendant is not intended to replace generic transportation nor to be used merely for convenience.

(e) Personal care can also include supporting a person at an integrated worksite where the individual is paid a competitive wage. This service must be billed under a separate code to distinguish it from other personal care activities.

(f) Personal care may be self-directed to allow participants and their families to recruit, hire, train, supervise, and if necessary to discharge, their own personal care workers.

(13) Environmental Accessibility Adaptations

(a) Environmental accessibility adaptations are those physical adaptations to the home, required by the recipients' plan of care, which are necessary to ensure the health, welfare

and safety of the individual, or which enable the individual to function with greater independence in the home and without which, the recipient would require institutionalization.

I. Such adaptations may include the installation of ramps and grab-bars, widening of doorways, modification of bathroom facilities, or installation of specialized electric and plumbing systems which are necessary to accommodate the medical equipment and supplies necessary for the welfare of the recipient, but shall exclude those adaptations or improvements to the home which are of general utility and are not of direct medical or remedial benefit to the waiver client, such as carpeting, roof repair, central air conditioning, etc. Adaptations that add square footage to the home are also excluded from this Medicaid reimbursed benefit. All services shall be provided in accordance with applicable State or local building codes.

(14) Specialized Medical Supplies

(a) Medical supplies are necessary to maintain the recipient's health, safety, and welfare and to prevent further deterioration of a condition such as decubitus ulcers. These supplies do not include common over-the-counter personal care items such as toothpaste, mouthwash, soap, shampoo, Q-tips, deodorant, etc.

(b) These medical supplies will only be provided when authorized by the recipient's physician and shall meet applicable standards of manufacturer, design and installation. Providers of this service will be those who have a signed provider agreement with Medicaid and the Department of Mental Health ~~and Mental Retardation~~. Medical supplies are limited to a maximum of \$1,800.00 per recipient per year. The operating agency ~~(OA)~~ must maintain documentation of items purchased for the recipient.

(15) Skilled Nursing

(a) Skilled nursing services are services listed in the plan of care which are within the scope of the Alabama Nurse Practice Act and are provided by a registered professional nurse, or licensed practical or vocational nurse under the supervision of a registered nurse, licensed to practice in the State. Service consists of nursing procedures that meet the person's health needs as ordered by a physician. Services will be billed by the hour. There is no restriction on the place of service.

(b) This service may also be self-directed when provided to a participant or family which is self-directing personal care services. Service includes training and supervision related to medical care and/or assistance with ordinarily self-administered medications to be provided by the personal care worker.

(16) Specialized Medical Equipment

(a) Specialized medical equipment includes devices, controls, or appliances specified in the plan of care, which enable recipients to increase their ability to perform activities of daily living or to perceive, control or communicate with the environment in which they live. Included items are those necessary for life support, and equipment necessary for the proper functioning of such items and durable and non-durable medical equipment not available under the Medicaid State Plan. Items reimbursed with waiver funds shall be in addition to any medical equipment furnished under the State Plan and shall exclude those items that are not of direct medical or remedial benefits to the recipient. Invoices for medical equipment must be maintained in the case record. This service must be necessary to prevent institutionalization of the recipient. All items shall meet applicable standards of manufacturer, design and installation. Costs are limited to \$5,000 per recipient, per year.

(17) Community Specialist Services

(a) Community Specialist Services include professional observation and assessment, individualized program design and implementation, training of consumers and family members, consultation with caregivers and other agencies, and monitoring and evaluation of planning and service outcomes. The functions outlined for this service differs from case management in that these functions will incorporate person-centered planning, whereas case management does not.

(b) The provider must meet QMRP qualifications and be free of any conflict of interest with other providers serving the consumer. A community specialist with expertise in person centered planning may also be selected by the consumer to facilitate the interdisciplinary planning term meeting.

(c) Targeted case managers will continue to perform traditional duties of intake, completion of paperwork regarding eligibility, serving in the capacity of referral and resource locating, monitoring and assessment.

(d) The planning team shall first ensure that provision of this service does not duplicate the provision of any other services, including Targeted Case Management provided outside the scope of the waiver.

(e) The community specialist will frequently be involved for only a short time (30 to 60 days); in such an instance, the functions, will not overlap with case management. If the consumer or family chooses to have the community specialist remain involved for a longer period of time, the targeted case manager will visit the consumer every 180 days and call at 90-day intervals to ensure services are being delivered and satisfactory.

(f) The community specialist will communicate with the case manager quarterly to remain abreast of the client's needs and condition.

(g) A community specialist who facilitates the planning meeting for a person shall not have any conflict of interest with any provider who may wish to serve the person.

(h) This service may be self-directed for participants who self-direct Personal Care. The community specialist will inform and consult, intervene, and trouble shoot any problems the participant may have with self-directing their services.

~~(h)~~ (i) This service is a cost-effective and necessary alternative to placement in an ICF-MR. A unit of service is 15 minutes.

(18) Crisis Intervention

(a) Crisis intervention provides immediate therapeutic intervention, available to an individual on a 24-hour basis, to address personal, social, and/or behavioral problems which otherwise are likely to threaten the health and safety of the individual or of others and/or to result in the individual's removal from his current living arrangement.

(b) Crisis intervention may be provided in any setting in which the consumer resides or participates in a program. The service includes consultation with family members, providers, and other caretakers to design and implement individualized crisis treatment plans and provide additional direct services as needed to stabilize the situation.

(c) Crisis intervention will respond intensively to resolve crisis situations and prevent the dislocation of the person at risk such as individuals with mental retardation who are occasionally at risk of being moved from their residences to institutional settings because of family's inability to cope with short term, intense crisis situations. This service is a cost-effective alternative to placement in an ICF-MR.

(d) Crisis intervention services are expected to be of brief duration (8 weeks, maximum). When services of a greater duration are required, the individual shall be transitioned to a more appropriate service program or setting.

(e) Crisis intervention services require two levels of staff, professional and technician.

(f) A unit of service is 15 minutes and must be provided by the waiver planning team, directed by a graduate psychologist or licensed social worker.

(g) When the need for this service arises, the service will be added to the plan of care for the person.

(h) A separate crisis intervention plan will be developed to define in detail the activities and supports that will be provided.

(i) All crisis intervention services shall be approved by the regional community service office of the DMH/MR prior to the service being initiated.

(j) Crisis intervention services will not count against the \$25,000 per recipient per year cap in the waiver, since the need for the service cannot accurately be predicted and planned for ahead of time.

(k) Specific crisis intervention service components may include the following:

1. Analyzing the psychological, social and ecological components of extreme dysfunctional behavior or other factors contributing to the crisis;
2. Assessing which components are the most effective targets of intervention for the short-term amelioration of the crisis;
3. Developing and writing an intervention plan;
4. Consulting and, in some cases, negotiating with those connected to the crisis in order to implement planned interventions, and following up to ensure positive outcomes from interventions or to make adjustments to interventions;
5. Providing intensive direct supervision when a consumer is physically aggressive or there is concern that the consumer may take actions that threaten the health and safety of self and others;
6. Assisting the consumer with self care when the primary caregiver is unable to do so because of the nature of the consumer's crisis situations; and
7. Directly counseling or developing alternative positive experiences for consumers who experience severe anxiety and grief when changes occur with job, living arrangement, primary caregiver, death of loved one, etc.

Author: Samantha McLeod, Associate Director, LTC Specialized Waiver Programs.

Statutory Authority: 42 CFR Section 441, Subpart G and the Home and Community-Based Waiver for Persons with Mental Retardation.

History: Rule effective July 9, 1985. **Amended:** November 18, 1987 and January 14, 1997.

Amended: Filed December 18, 2000; effective March 12, 2001. **Amended:** Filed March 21, 2005; effective June 16, 2005. **Amended:** Filed November 19, 2007; effective February 15, 2008. **Amended:** Filed January 21, 2009; effective April 17, 2009. **Amended:** Filed April 20, 2012.