

IC 12-11-1.1

Chapter 1.1. Bureau of Developmental Disabilities Services; Community Based Services

IC 12-11-1.1-1

Establishment; services; approving entities and providers; supported living service arrangements; community based services; administration

Sec. 1. (a) The bureau of developmental disabilities services is established within the division.

(b) The bureau shall plan, coordinate, and administer the provision of individualized, integrated community based services for individuals with a developmental disability and their families, within the limits of available resources. The planning and delivery of services must be based on future plans of the individual with a developmental disability rather than on traditional determinations of eligibility for discrete services, with an emphasis on the preferences of the individual with a developmental disability and that individual's family.

(c) Services for individuals with a developmental disability must be services that meet the following conditions:

- (1) Are provided under public supervision.
- (2) Are designed to meet the developmental needs of individuals with a developmental disability.
- (3) Meet all required state and federal standards.
- (4) Are provided by qualified personnel.
- (5) To the extent appropriate, are provided in home and community based settings in which individuals without disabilities participate.
- (6) Are provided in conformity with a service plan developed under IC 12-11-2.1-2.

(d) The bureau shall approve entities to provide community based services and supports as follows:

- (1) Beginning July 1, 2011, the bureau shall ensure that an entity approved to provide day services, identified day habilitation, including facility based or community based habilitation, prevocational services, or employment services under home and community based services waivers is accredited by an approved national accrediting body described in subsection (j).
- (2) Beginning July 1, 2012, the bureau shall ensure that an entity approved to provide residential habilitation and support services under home and community based services waivers is accredited by an approved national accrediting body. However, if an entity is accredited to provide home and community based services under subdivision (1) other than residential habilitation and support services, the bureau may extend the time that the entity has to comply with this subdivision until the earlier of the following:

- (A) The completion of the entity's next scheduled

accreditation survey.

(B) July 1, 2015.

(e) Subject to subsection (k), the bureau shall initially approve, reapprove, and monitor community based residential, habilitation, and employment service providers that provide alternatives to placement of individuals with a developmental disability in state institutions and health facilities licensed under IC 16-28 for individuals with a developmental disability. The services must simulate, to the extent feasible, patterns and conditions of everyday life that are as close as possible to normal. The community based service categories include the following:

(1) Supervised group living programs, which serve at least four (4) individuals and not more than eight (8) individuals, are funded by Medicaid, and are licensed by the community residential facilities council.

(2) Supported living service arrangements to meet the unique needs of individuals in integrated settings. Supported living service arrangements providing residential services may not serve more than four (4) unrelated individuals in any one (1) setting. However, a program that:

(A) is in existence on January 1, 2013, as a supervised group living program described in subdivision (1); and

(B) has more than four (4) individuals residing as part of the program;

may convert to a supported living service arrangement under this subdivision and continue to provide services to up to the same number of individuals in the supported living setting.

(f) To the extent that services described in subsection (e) are available and meet the individual's needs, an individual is entitled to receive services in the least restrictive environment possible.

(g) Community based services under subsection (e)(1) or (e)(2) must consider the needs of and provide choices and options for:

(1) individuals with a developmental disability; and

(2) families of individuals with a developmental disability.

(h) The bureau shall administer a system of service coordination to carry out this chapter.

(i) The bureau may issue orders under IC 4-21.5-3-6 against a provider that violates rules issued by the bureau for programs in which the provider is providing services in accordance with section 11 of this chapter.

(j) For purposes of subsections (d) and (k), "approved national accrediting body" means any of the following:

(1) The Commission on Accreditation of Rehabilitation Facilities (CARF), or its successor.

(2) The Council on Quality and Leadership In Supports for People with Disabilities, or its successor.

(3) The Joint Commission on Accreditation of Healthcare Organizations (JCAHO), or its successor.

(4) The National Committee for Quality Assurance, or its successor.

- (5) The ISO-9001 human services QA system.
- (6) The Council on Accreditation, or its successor.
- (7) An independent national accreditation organization approved by the secretary.

(k) An entity that is accredited by an approved national accrediting body is not subject to reapproval surveys or routine monitoring surveys by the division, bureau, or bureau of quality improvement services, including any reapproval survey under a home and community based services waiver. However, the bureau may perform validation surveys and complaint investigations of an entity accredited by an approved national accrediting body.

As added by P.L.272-1999, SEC.33. Amended by P.L.243-2003, SEC.11; P.L.99-2007, SEC.70; P.L.22-2010, SEC.1; P.L.153-2011, SEC.11; P.L.154-2012, SEC.1; P.L.130-2013, SEC.1.

IC 12-11-1.1-2

Medicaid funding; payment for services

Sec. 2. (a) Except as specified by the terms of the Medicaid program:

- (1) an individual who receives services under this chapter; and
- (2) the parents of the individual, if the individual is less than eighteen (18) years of age;

are liable for the cost of services and supports.

(b) The bureau shall make every effort to assure that individualized service plans developed for individuals with a developmental disability maximize the amount of Medicaid funding available to meet the needs of the individual.

(c) The bureau may provide reimbursement for services identified in an individual's individual service plan that are not eligible for Medicaid reimbursement and for which the individual does not have the resources to pay.

As added by P.L.272-1999, SEC.33. Amended by P.L.99-2007, SEC.71.

IC 12-11-1.1-3

Contracts to provide services

Sec. 3. The division may contract with:

- (1) community mental retardation and other developmental disabilities centers;
- (2) corporations; or
- (3) individuals;

that are approved by the division to provide the services described in this chapter.

As added by P.L.272-1999, SEC.33.

IC 12-11-1.1-4

Continuing eligibility for Medicaid

Sec. 4. An individual with a developmental disability who is eligible for Medicaid remains eligible for Medicaid if transferred to community based services described in section 1(e) of this chapter.

As added by P.L.272-1999, SEC.33. Amended by P.L.99-2007, SEC.72.

IC 12-11-1.1-5

Continuing approved placement of individuals in certain facilities

Sec. 5. The bureau may continue the approved placement of an individual with a developmental disability in a child caring institution licensed under IC 31-27, a county home regulated by IC 12-30-3, or a health facility licensed under IC 16-28 if:

- (1) the individual was placed in the institution, home, or facility before July 1, 1985; and
- (2) the placement continues to be appropriate for the individual, as determined by the bureau.

As added by P.L.272-1999, SEC.33. Amended by P.L.145-2006, SEC.70; P.L.99-2007, SEC.73.

IC 12-11-1.1-6

Individuals with autism not excluded

Sec. 6. An individual who has been diagnosed to have autism may not be excluded from services for individuals with a developmental disability because the individual has autism.

As added by P.L.272-1999, SEC.33. Amended by P.L.99-2007, SEC.74.

IC 12-11-1.1-7

Community residential facilities operated by division

Sec. 7. Subject to the availability of money, the division may operate community residential facilities for individuals with a developmental disability who are hard to place, if private providers cannot be found to operate facilities for those individuals. Placement of individuals in these facilities is governed by IC 12-11-2.1.

As added by P.L.272-1999, SEC.33. Amended by P.L.99-2007, SEC.75.

IC 12-11-1.1-8

Repealed

(Repealed by P.L.188-2013, SEC.7.)

IC 12-11-1.1-9

Rules

Sec. 9. The director of the division may adopt rules under IC 4-22-2 to carry out this chapter.

As added by P.L.272-1999, SEC.33.

IC 12-11-1.1-10

Provider assessment

Sec. 10. (a) The office may assess providers of community based services to individuals with a developmental disability who otherwise qualify to receive ICF/MR (as defined in IC 16-29-4-2) based services in an amount not to exceed six percent (6%) of all

service revenue included on the annual plan of care excluding resident living allowances.

(b) The assessments shall be paid to the office not later than the tenth day of the month for each month that the individual is in service. The office or the office's designee may withhold Medicaid payments to a provider described in subsection (a) that fails to pay an assessment within thirty (30) days after the due date. The amount withheld may not exceed the amount of the assessments due.

(c) The community services quality assurance fund is created. The fund shall be administered by the office.

(d) Revenue from the assessments under this section shall be deposited into the fund. Money in the fund must be used for community services for persons with developmental disabilities.

(e) Money in the fund at the end of a state fiscal year does not revert to the state general fund.

(f) If federal financial participation to match the assessments in subsection (a) becomes unavailable under federal law, the authority to impose the assessments terminates on the date that the federal statutory, regulatory, or interpretive change takes effect.

As added by P.L.259-2003, SEC.1. Amended by P.L.246-2005, SEC.101.

IC 12-11-1.1-11

Issuance of citation for violations; requirements; remedies; considerations in determining remedy

Sec. 11. (a) Upon a determination by the bureau that a provider has violated this article or a rule adopted under this article, the director shall issue a citation under IC 4-21.5-3-6 to the provider. The citation must state the following:

- (1) The nature of the violation.
- (2) The classification of the violation.
- (3) The corrective actions required of the provider to remedy the breach and to protect clients of the provider.
- (4) Any penalty imposed on the provider.

(b) A person aggrieved by a citation issued under this section may request a review under IC 4-21.5-3-7. If a request for a hearing is not filed within the fifteen (15) day period, the determination contained in the citation is final.

(c) The bureau may impose the following remedies for a violation of this article or a rule adopted under this article:

- (1) Issuance of an order for immediate correction of the violation.
- (2) Imposition of a fine not to exceed ten thousand dollars (\$10,000).
- (3) Suspension of new clients by the provider for a period not to exceed ninety (90) days.
- (4) Revocation of the provider's license or issuance of a probationary license.
- (5) A requirement that the provider comply with any plan of correction approved or directed by the division.

(d) In determining appropriate remedies under this section for a violation, the bureau shall consider the following:

- (1) Whether the violation occurred for reasons beyond the provider's control.
- (2) Whether the provider has demonstrated that the provider has taken the appropriate steps to reasonably ensure that the violation will not recur.
- (3) The history of violations by the provider.
- (4) The effect of the violation on the client.
- (5) The degree of the violation.

As added by P.L.153-2011, SEC.12.