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Governor Matthew H. Mead

BHD Bulletin

DATE: February 27, 2014

TO: All Habilitation Providers, Participants, and Legal Representatives

FROM: Joe Simpson, Administrator, Behavioral Health Division - Developmental Disabilities Section

SUBJECT: Division Requirements for Providers Implementing Staffing Flexibility

REF #: JS-2014-007

The Wyoming Department of Health, Behavioral Health Division (Division) is announcing that the strict staffing requirement for the high, moderate, and intermittent tier levels of residential and day habilitation services for participants on the Adult Developmental Disabilities (DD), Child DD, and Acquired Brain Injury waivers may be relaxed under certain circumstances as specified in this bulletin. Staffing flexibility, when implemented appropriately, may allow many participants to receive more individualized attention from one staff for training, accessing community places, or exercising choice in activities. An excellent use of staffing flexibility would be when a provider uses the flexibility option to have a second or third floating employee take a participant out to shop, or attend an activity or event, while other staff remain at home with other participants during low activity times.

To schedule flexibility for the provision of services delivered, providers serving participants with high, moderate, or intermittent support needs in residential or day habilitation may use more flexibility in staffing than the amount indicated by the tiered ratio level if the provider abides by the policy and procedure requirements listed in this bulletin. *The flexibility does not apply to participants with approved levels of need at the intensive (1:1) or highly intensive (2:1) tiers.* In the new waivers, flexibility may be applied with participants in level of service need tiers 1-5 in residential services and levels 1 and 2 of day services if appropriate for their needs.

Staffing flexibility may be utilized only during low activity times of the day.

- **Low activity** times include sedentary activities like watching television, reading, playing on the computer, relaxing and socializing with peers.
- **Peak activity** times include meal preparation, meal time, hygiene and personal care activities, skills/goal training, community integration, medication assistance, and times when participants need help with house chores, such as cleaning, laundry, and meal preparation.
- **Time limits.** Supervision flexibility for most participants in the lower three tier levels may be implemented up to two (2) hours a day during day services and up to four (4) hours a day in

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residential services during waking hours. On weekends, flexibility may be used for up to six (6) hours during waking hours. Using flexibility for more hours than those specified from the approved tier level requires a formal change in the plan of care and the habilitation tier level. *Some participant's health and safety may be at risk with any staffing flexibility implemented; therefore, a provider must review each individual's support needs and risks before implementing a change in staffing.*

UPDATED PLAN OF CARE REQUIREMENT

As required in Wyoming Medicaid Rules, [Chapters 41, 42, and 43](#):

- Section 9(b)(vi), services shall be provided pursuant to the Individualized Plan of Care;
- Section 9(a)(iii)(L) of those chapters, service schedules must provide information about the supports needed throughout a participant's day and justify the rates for services; and
- Section 9 (c) and (d) of those chapters require case managers to receive approval for a modification to the plan of care under specific circumstances.

Therefore, staffing support provided to a participant must be documented on the service schedule and must justify the rate being paid, even when some flexibility is added to the service. The plan of care may need to be modified if the supports needed and provided are changing due to staffing flexibility. Overall flexibility during the entirety of a service day is not permitted.

To add flexibility to the provision of services delivered, **the new [Supervision Flexibility form](#) must be completed, signed, and added to the participant's document library in the electronic Medicaid Waiver System (EMWS) by June 1, 2014, to document that the provider discussed staffing flexibility with the participant or legally authorized representative and the case manager.** The form requires the provider to discuss planned staffing patterns for the participant and how flexibility will be not impact the health, safety, community integration, and individual training needs for that participant. The form is available on the Division's website at <http://health.wyo.gov/ddd/cmforms.html> and is also enclosed with the electronic distribution of this bulletin. After June 1, 2014, the provider may not provide a different level of support to the participant without having this form included in EMWS as an update to the Plan of Care.

As a reminder of the current rules for plan modifications, any time the support needs of the participant changes the Plan of Care must be updated. If the frequency and intensity of the support needed by the individual changes when staffing flexibility is implemented, and the support provided is not consistent with the Plan of Care, then the Plan of Care must be modified in the pertinent sections. All team members must receive the updates to the Plan of Care.

SYSTEMATIC APPROACH TO STAFFING REQUIREMENT

Providers are already required to have and implement staffing policies and procedures. Current requirements include that: 1) the provider administrative team must have a comprehensive knowledge of the services and supports appropriate and relevant for the needs of each person served in their organization; 2) any provider staff working with a participant must be trained on the participant's Plan of Care; and 3) staffing must be evaluated per participant, group, and location to ensure adequate staff are on-site to meet the health, safety, support, community integration, and plan of care outcome needs of each person in the group.

In implementing staffing flexibility, providers must update their staffing and on-call policies and procedures by April 1, 2014, to reflect the changes noted in this bulletin and ensure all other policy provisions are addressed. Provider staff must receive training on the provider's updated staffing policies and procedures. This training must be documented and be made available to the Division, if requested.

Additional staffing policy requirements must include:

- **How the number of staff for each participant, service setting, group, and location are decided and assigned.** The determination of appropriateness of personnel assignments must include the consideration of each of the following factors:
 - Varying support/supervision needs of all participants throughout the day;
 - Medical needs;
 - Activities of Daily Living (ADL) assistance;
 - Participant illness, when one needs to stay home;

- Goal attainment;
 - Social interaction;
 - Community integration;
 - Participant choice in activities/schedule;
 - Special events and holiday participation and coverage;
 - Incidents involving other participants;
 - Employee background check status;
 - Division training requirements or other provider organizational requirements; and
 - Holiday/leave coverage.
- **How the provider ensures adequate staff were present** and providing the services specified in the plans of care.
 - **A process for documenting and addressing concerns with understaffing** or insufficient staffing claims made by employees, case managers, participants, or guardians.
 - **How staffing documentation will be made available** on the day requested by the Division or Medicaid.

The provider must be able to demonstrate functional control of the personnel assignments to each waiver service environment and assignments must be based on the needs of the individual and immediate community. The key to this control is the ability of the organization to establish that an adequate number of personnel have been assigned, who have the experience and training required to effectively deal with the participant needs for which they are responsible to support.

The provider must ensure the on-call system, in which the provider coordinates on-call personnel to assist and intervene with participant support as situations require, can be accessed by all staff and participants as needed for emergencies, no-shows, or unexpected activities.

The provider must be able to provide evidence demonstrating:

- How the organization assigns staff, such as home or group assignments, pay records, etc.
- Data archives showing who worked, where the employee worked, and when.
- Effective policy and procedure implementation, which verifies that personnel know the process for assigning staff, accessing on-call staff, documenting time on shift, and the specific participants with whom each staff worked.

Providers should also consider conducting a supplemental risk assessment for each participant in their care to determine appropriate health and safety needs, which assesses risk beyond the plan of care. *The Division does not have a standardized risk assessment outside of the questions on risk in the plan of care, so providers may research and use a risk assessment suitable for their organization.*

TECHNICAL ASSISTANCE

The Division Provider Support Specialists are available to discuss provider policy requirements, sample scenarios, and review drafts of policies as they are developed.

FLEXIBILITY MONITORING AND QUALITY ASSURANCE

A participant or legal representative, who has concerns with changes to a provider's services or the staffing support provided, should report the concern during the team meeting and/or to the provider and case manager. If concerns are not addressed, the participant and guardian are encouraged to contact the Division at (307) 777-7115 to discuss the situation.

If the Division finds staffing patterns or supports provided that may be inadequate to meet the needs of participants in the area, the Division will gather information and discuss the situation with a provider administrator to resolve the concern. If insufficient staffing patterns are found by the Division, which deny a participant access to the community, access to appropriate individualized training and support, or otherwise create an unsafe environment, the area of non-compliance will result in either provider consultation, corrective action plans, referrals to Medicaid Program Integrity or the Medicaid Fraud Control Unit, sanctions, and/or other action allowed by Medicaid Rules.

TRANSITION PROCESS REMINDER AND PROVIDING CHOICE

Waiver services are intended to provide participants with training and opportunities to be as independent as possible, be an active member of his or her community, and receive services in the most integrated and appropriate environment. Integration and participation in community activities should be individualized and chosen by the participant, including the size of the group or the people who go out together. Integration means being among various peers, including peers without disabilities, which does not include paid support staff. Participants should be able to access the community individually or in small groups. Participants should not have to be in large groups to access the community if they do not want to. They also should not have to move to different group homes due to provider convenience with staffing flexibility changes. A person's home and community life shall stay as consistent and individualized as possible.

Providers are reminded that modifications to the Plan of Care, including participant moves and transitions to new living settings due to the implementation of staffing flexibility, require a team meeting or transition as specified in Chapter 41, 42, and 43, Section 9 (c)(vi) and (d) and Chapter 45, Section 32(f), which includes giving the participant and guardian thirty (30) days advance notice, providing choice of providers if the new residence is not acceptable, and notifying the participant's case manager so a team meeting can be scheduled. The Division's transition checklist must be completed for any move. Noncompliance with the transition rule may result in provider corrective action.

FOR QUESTIONS

Additional discussion on these requirements will be held during the Monthly Provider Support Call on March 27, 2014, at 2 pm (1-877-278-8686 access code 252484). Please save the date and time if you are interested in participating or asking questions. As always, submit your questions to your provider support specialist to help us prepare the most thorough response to your question before the call. Case managers are asked to be a part of the call. During the call, the Division will review the monitoring responsibilities for case managers and answer questions regarding any concerns or issues a case manager may have as staffing flexibility may be implemented by some providers.

As DD Waiver participants transition to the new Comprehensive and Supports Waivers over the next year, participants will switch to new levels of service for Residential Habilitation, Community Integration Services, Adult Day Services, or other available waiver services. The providers must always follow the support specified in a participant's approved Plan of Care for the services being provided. The tier levels in the new services are still based on a presumed staffing assignment as reflected in the rate methodology, and flexibility may be applied with participants in tiers 1-5 of residential services and levels 1 and 2 of day services if appropriate for their needs.

The Division believes these changes will support providers in having the flexibility needed to operate their business in the most appropriate manner while continuing to ensure that participants' needs are met according to their plan of care. Please contact your Provider Support Specialist or Participant Support Specialist at the Division by calling them directly or contacting our main office line at (307) 777-7115 if you have concerns or questions regarding these changes.

Sincerely,



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Administrator