AN ACT

ENTITLED, An Act to revise certain rules relating to the Department of Human Services Medicaid waiver programs.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

Section 1. That ARSD 67:54:04:01 be amended to read as follows:

67:54:04:01. Definitions. Terms used in this chapter mean:

(1) "CSP," community support provider;

(2) "Functional limitation," a deficit that is indicated by a score that is at least two standard deviations below the mean on a standardized adaptive behavior instrument score;

(3) "Home and community-based services" or "HCBS," the services listed in § 67:54:04:14 that are provided by a certified provider to participants who, without these services, would require placement in an intermediate care facility for the mentally retarded;

(4) "ICAP," Inventory for client and agency planning;

(5) "Individual service plan" or "ISP," a single plan for the provision of services and supports to the participant that is directed by the participant, is outcome-oriented, and is intended to specify all needed assessments, supports, and training;

(6) "ISP team," a team composed of the coordinator, the participant, the participant's parent or guardian if the participant is under 18 and anyone else the participant desires;

(7) "Participant," a person receiving services or support under the provisions of these articles;;

(8) "Provider," a private organization or a cooperative educational service unit which provides HCBS under this chapter and is certified by the Department of Human Services under article 46:11 and article 46:13 as a community support provider as defined in subdivision 27B-1-17(4);

(9) "QMRP," qualified mental retardation professional; and

(10) "TANF," temporary assistance for needy families.

Section 2. That ARSD 67:54:04:03 be amended to read as follows:

67:54:04:03. Financial eligibility requirements. HCBS may be available to an individual who meets one of the following requirements:

(1) Is receiving TANF, SSI, or a foster care maintenance payment under Title IV-E of the Social Security Act; or

(2) Is aged, blind, or disabled and has an income less than 300 percent of the SSI standard benefit but is not eligible for SSI.

Section 3. That ARSD 67:54:04:03 be amended by adding thereto a NEW SECTION to read as follows:

67:54:04:03.01 Notification of eligibility. The Department of Social Services shall send the participant notice of eligibility pursuant to § 67:46:08:02.

Section 4. That ARSD 67:54:04:06 be amended to read as follows:

67:54:04:06. Preplacement assessment. Before HCBS is approved for an individual, the proposed HCBS provider shall complete an ICAP. The ICAP shall indicate a substantial functional limitation in at least three of the seven areas listed in § 67:54:03:04. The proposed HCBS provider shall submit the ICAP to the Division of Developmental Disabilities, Department of Human Services, using the ICAP Compuscore software. The division shall receive this data annually by January 15th. For an individual's record to be valid, the evaluation date may not be more than 13 months old. The Compuscore software generates standardized domain scores for each of its adaptive behavior sections: motor skills, social and communication skills, personal living skills, and community living skills.

No deficit exists if the following criteria are met:

(1) Self care: The personal living skills domain score exceeds the age-related criterion in Appendix A at the end of chapter 67:54:03 and, for individuals over four years of age, the individual

has no arm/hand limitations in daily activities (ICAP item C8=1);

(2) Language: The social and communication skills domain score exceeds the age-related criterion in Appendix A at the end of chapter 67:54:03 and, for individuals over four years of age, the individual speaks (ICAP item A7=3);

(3) Learning/cognition: The individual is not mentally retarded (ICAP item C1=1);

(4) Mobility: The individual walks (ICAP item C9=1) and, for individuals over four years of age, no mobility assistance is needed (ICAP item C10=1);

(5) Self-direction: The general maladaptive index is in the normal range (ICAP, GMI> -11), the individual's community living skills domain score exceeds the age-related criterion in Appendix A at the end of chapter 67:54:03, and there is no psychiatric diagnosis (neither ICAP items B11 nor B12 checked);

(6) Independent living: The individual's community living skills domain score exceeds the age-related criterion in Appendix A at the end of chapter 67:54:03 and, for individuals 18 years of age and older, the recommended residential placement is "independent in own home or rental unit" (ICAP, page 10, F2="3"); and

(7) Economic self-sufficiency: The individual's recommended daytime program (ICAP item G2) is "competitive employment."

A substantial deficit is present if the preceding criteria are not met.

Section 5. That ARSD 67:54:04:07 be repealed.

Section 6. That ARSD 67:54:04:08 be repealed.

Section 7. That 67:54:04:10 be amended to read as follows:

67:54:04:10. Individual service plan. Each HCBS participant shall have an ISP prepared according to § 46:11:05:03.

Section 8. That ARSD 67:54:04:12 be amended to read as follows:

67:54:04:12. Determining amount of HCBS assistance. Payment for HCBS is based on the difference between the participant's income, minus allowable deductions, and the participant's monthly care costs. If the participant meets the requirements of subdivision 67:54:04:03(1), none of the participant's income is credited to the monthly care costs. If the participant meets the requirements of subdivision 67:54:04:03(2), the department applies the following criteria to determine the amount of assistance a participant is eligible to receive from the department to meet the participant's monthly care costs:

(1) Apply the provisions of chapter 67:46:06, with the exception of § 67:46:06:05;

(2) If the participant is married, apply the provisions of chapter 67:46:07, with the exception of subdivision 67:46:07:10(1);

(3) Allow a deduction equal to the supplemental security income (SSI) standard benefit amount for the participant's personal needs; and

(4) If the participant is employed, allow a deduction of $400 from gross wages.

The Department of Social Services shall pay its share of the costs directly to the provider agency. The participant is responsible for paying the participant's share directly to the provider agency.

Section 9. That 67:54:04:13 be repealed

Section 10. That 67:54:04:14 be amended to read as follows:

67:54:04:14. Covered services: Home and community-based services covered and payable under this chapter consist of the following only if they are not otherwise payable under article 67:16:

(1) Day habilitation;

(2) Prevocational services;

(3) Service coordination;

(4) Supported employment;

(5) Medical equipment and drugs;

(6) Nursing; and

(7) Other medically related services such as speech, hearing, and language.

Section 11. That 67:54:04:15 be repealed.

Section 12. That 67:54:04:16 be repealed.

Section 13. That 67:54:04:17 be repealed.

Section 14. That ARSD 67:54:04:18 be amended to read as follows:

67:54:04:18. Initial level of care. The following documentation is required to determine the initial level of care:

(1) A completed ICAP that indicates a minimum of three substantial functional limitations;

(2) A copy of the psychological evaluation;

(3) An HCBS Waiver Choice and Rights Form signed by a CSP staff member and the individual, the individual's parent if the individual is under 18 years of age, or the individual's guardian; and

(4) A provisional plan of care that designates the specific waiver service that the individual will receive.

Section 15. That ARSD chapter 67:54:04 be amended by adding thereto a NEW SECTION to read as follows:

67:54:04:08.01. Redetermination of level of care. The level of care shall be reviewed and completed annually for each participant receiving waiver services. The CSP shall update the ICAP data annually and submit it to the division. The QMRP, as defined in SDCL subdivision 27B-1-17(14), shall review the ICAP data to ensure continued eligibility that indicates at least three substantial functional limitations. The QMRP shall forward a copy of the completed Level of Care Determination form to the CSP and the Department of Social Services upon completion of the review.

Section 16. That ARSD 67:54:04:22 be amended to read as follows:

67:54:04:22. Extent of payment. The department shall pay a facility for the days a participant is enrolled with the provider. Enrolled days include the day of admission but exclude the day of discharge.

Section 17. That ARSD 67:54:04:23 be amended to read as follows:

67:54:04:23. Payments during temporary absences. Payment shall be made onbehalf of an eligible participant when it is necessary to reserve that participant's HCBS position during temporary absences. Payment shall be made for a maximum of five days if the absence is due to admission to an acute care general hospital for an acute condition.

Section 18. That ARSD 67:54:04:24 be amended to read as follows:

67:54:04:24. Basis of payment. Payment to a participating provider for services provided shall be determined by the Department of Human Services.

Section 19. That ARSD 67:54:04:25 be amended to read as follows:

67:54:04:25. Utilization review. Services provided under this chapter are subject to the following utilization reviews:

(1) At the time of eligibility determination;

(2) During claim processing;

(3) During postpayment reviews; and

(4) At the time of the annual redetermination of eligibility.

Section 20. That ARSD 67:54:04 be amended by adding thereto a NEW SECTION to read as follows:

67:54:04:27. Right to request a fair hearing. A participant or a participant's parent or guardian who is dissatisfied with a determination regarding services under this chapter may request a fair hearing in accordance with chapter 67:17:02.

A participant may request assistance with the fair hearing process from an advocate.

Section 21. That ARSD 67:54:09:01 be amended to read as follows:

67:54:09:01. Definitions. Terms used in this chapter mean:

(1) "Activities of daily living," routine activities that an individual would normally do every day such as eating, bathing, dressing, toileting, and transferring;

(2) "Companion services," nonmedical services geared towards developing an individual's independent living skills;

(3) "Department," the Department of Social Services;

(4) "Division," the Division of Developmental Disabilities for the Department of Human Services;

(5) "Individual," a person not yet receiving services or supports under the provisions of this chapter;

(6) "Individual service plan" or "ISP," a single plan for the provision of services and supports to the participant that is directed by the participant, is out-come oriented, and is intended to specify all needed assessments, supports, and training;

(7) "Participant," a person receiving services or supports under the provisions of this chapter;

(8) "Personal care services," services that enable an individual to accomplish tasks that the individual would normally do if the individual did not have a disability;

(9) "SSI," supplemental security income; and

(10) "Unit," a 15-minute segment of time.

Section 22. That ARSD 67:54:09:02 be amended to read as follows:

67:54:09:02. Covered family support services. For a participant who meets the requirements of §§ 67:54:09:12 and 67:54:09:13, the following family support services are covered under this chapter:

(1) Specialized medical and adaptive equipment and supplies;

(2) Service coordination;

(3) Respite care services;

(4) Nutritional supplements;

(5) Personal care services;

(6) Companion services;

(7) Environmental accessibility adaptations;

(8) Supported employment; and

(9) Vehicle modifications.

Section 23. That ARSD 67:54:09:03 be amended to read as follows:

67:54:09:03. Specialized medical and adaptive equipment and supplies. Specialized medical and adaptive equipment and supplies include devices, controls, or appliances not covered under article 67:16. The equipment and supplies shall be documented in the participant's ISP and shall help the participant perform activities of daily living or assist the participant in perceiving, controlling, or communicating with the environment in which the participant lives.

Section 24. That ARSD 67:54:09:04 be amended to read as follows:

67:54:09:04. Service coordination. Service coordination includes the following:

(1) Coordination of services that will assist the participant to gain access to needed medical, social, and other needed services;

(2) Ongoing monitoring of the services; and

(3) Initiating and overseeing the assessment and reassessment of the participant's level of care.

Section 25. That ARSD 67:54:09:05 be amended to read as follows:

67:54:09:05. Respite care services. Respite care services include care services needed on a short-term basis because of the absence of the primary care giver or to provide temporary relief to the

primary care giver. Respite care may be provided either in the participant's home or in a location outside the participant's home.

Section 26. That ARSD 67:54:09:06 be amended to read as follows:

67:54:09:06. Nutritional supplements. Nutritional supplements include nutritional supplements prescribed by a physician and not otherwise covered under article 67:16. The need for nutritional supplements shall be documented in the participant's ISP.

Section 27. That ARSD 67:54:09:07 be amended to read as follows:

67:54:09:07. Personal care services. Personal care services include the following:

(1) Assistance with basic living skills such as eating, drinking, toileting, dressing, and personal hygiene;

(2) Assistance with the preparation of meals, not to include the cost of the food itself; and

(3) Assistance with housekeeping chores such as making the bed, dusting, and vacuuming.

The need for personal care services shall be documented in the participant's ISP.

Section 28. That ARSD 67:54:09:08 be amended to read as follows:

67:54:09:08. Companion services. Companion services include the following:

(1) Assistance with or supervision of laundry, shopping, or meal preparation, not to include the cost of the food;

(2) Assistance or supervision with the acquisition, retention, or improvement in self-help, socialization, and adaptive skills;

(3) Assistance with participation in community events to develop appropriate social skills to become integrated into the community.

The need for companion care shall be documented in the participant's ISP.

Section 29. That ARSD 67:54:09:09 be amended to read as follows:

67:54:09:09. Environmental accessibility adaptations. Environmental accessibility adaptations

include modifications to the participant's home owned by the participant or the participant's family to ensure the participant's health, safety, and welfare or that enable the participant to function with greater independence in the home and without which the participant would require institutionalization. Adaptations include items such as the following:

(1) The installation of ramps or grab bars;

(2) Widening of doorways;

(3) Modifications to bathroom facilities; and

(4) Installation of specialized electric and plumbing systems necessary to accommodate necessary medical equipment and supplies.

Adaptations or improvements to the home that increase the total square footage of the home or are not a direct medical or remedial benefit to the participant, such as carpeting, roof repair, or central air conditioning, are not covered. The division shall prior authorize any environmental accessibility adaptation that exceeds the cost of $1,000.

The needed adaptations shall be documented in the participant's ISP.

Section 30. That ARSD 67:54:09:10 be amended to read as follows:

67:54:09:10. Supported employment services. Supported employment services are employment services for an eligible participant who, because of the participant's disability, needs intensive, ongoing support to perform in a work setting or services directed towards assisting the participant to obtain and retain paid employment in a community setting in which individuals without disabilities are employed. Supported employment services include the following:

(1) Supervision and training;

(2) Job search;

(3) Job placement;

(4) Situational evaluations and trial placements; and

(5) Long-term support to help a participant maintain a desired, integrated employment status.

Supervisory activities provided as a normal part of the business setting, the production of goods or services, transportation, or compensation for each participant served are not covered.

The needed supported employment services shall be documented in the participant's ISP.

Section 31. That ARSD 67:54:09:11 be amended to read as follows:

67:54:09:11. Vehicle modification -- Exclusions. Vehicle modification consists of adaptations or alterations to an automobile that is the participant's primary means of transportation. The adaptations shall be documented in the participant's ISP and shall ensure the health, safety, and welfare of the participant. The following services are not covered:

(1) Adaptations to a vehicle that are of general utility and do not directly benefit the participant;

(2) The purchase or lease of a vehicle; and

(3) Except for the upkeep and maintenance of covered adaptations and alterations, the regular upkeep and maintenance of a vehicle.

Section 32. That ARSD 67:54:09:12 be amended to read as follows:

67:54:09:12. Eligibility for family support services. The department shall apply the provisions of chapters 67:16:01, 67:46:01 through 67:46:05, inclusive, 67:46:07, and 67:46:08 when determining eligibility for services provided under this chapter. The individual shall be receiving SSI or be aged, blind, or disabled and have income less than 300 percent of the SSI standard benefit amount. In addition, the following requirements shall also be met:

(1) The division has determined that the individual meets developmental disability criteria pursuant to § 67:54:03:03 or, if the individual is age birth through two years of age, the division has documentation from the Department of Education that indicates the child has been identified as needing prolonged assistance as defined in § 24:05:24.01:15;

(2) For individuals age four and above, the division has determined that the individual has

substantial deficits as exhibited by completion of an Inventory for Client and Agency Planning (ICAP) pursuant to § 67:54:04:06;

(3) The division has determined that the individual is in need of and eligible for placement in an intermediate care facility for the mentally retarded or the developmentally disabled based on the division's finding that the individual has a substantial functional limitation in three or more of the functional areas listed in § 67:54:04:06; and

(4) The division has an ISP for the individual that has been prepared under the provisions of § 67:54:09:15.

Section 33. That ARSD 67:54:09:13 be amended to read as follows:

67:54:09:13. Service restrictions. An individual may not receive family support services if already receiving services under chapter 67:54:04, 67:54:06, or 67:44:03. An individual may not be a resident of any of the following facilities when the family support services available under the provisions of this chapter are provided:

(1) A hospital;

(2) A nursing facility; or

(3) An intermediate care facility for individuals who are mentally retarded or developmentally disabled.

Section 34. That ARSD 67:54:09:14 be repealed.

Section 35. That ARSD 67:54:09:15 be amended to read as follows:

67:54:09:15. Service coordinator to coordinate development of ISP. The participant's service coordinator shall coordinate the development of a written ISP according to § 46:10:07:20. The plan shall contain a description of the services to be furnished, the frequency of the service, and the type of provider who will furnish the needed service.

Section 36. That ARSD 67:54:09:167 be amended to read as follows:

67:54:09:17. Rate of payment. The division shall establish and specify in the division's contract with the provider the rate of payment for service coordination. The participant's ISP shall document an established rate for respite, personal, and companion care services. The remaining covered services are paid based on the charges billed for the services provided not to exceed the limits identified in the approved participant's ISP.

Section 37. That ARSD 67:54:09:18 be amended to read as follows:

67:54:09:18. Billing requirements. A claim submitted for payment under this chapter shall contain the following HCPCS procedure codes, as applicable.

PROCEDURE CODE	DESCRIPTION
T1020	Companion care
S5165	Home modifications
B4222	Nutritional supplements
T1005	Respite care
T1016	Service coordination
T1019	Personal care
T2018	Supported employment
A9900	Specialized medical adaptive equipment and supplies
T2039	Vehicle modifications
G0154	Personal Care 2

Section 38. That ARSD 67:54:09:19 be amended to read as follows:

67:54:09:19. Claim requirements. A claim for services provided under this chapter shall be submitted on a form or in an electronic format that contains the following information:

(1) The participant's full name;

(2) The participant's medical assistance identification number from the participant's medical

identification card;

(3) Third-party liability information required under chapter 67:16:26;

(4) The date of service;

(5) The place of service;

(6) The provider's usual and customary charge. The provider may not subtract other third-party or cost-sharing from this charge;

(7) The units of service furnished, if more than one, for claims submitted for respite care, service coordination, personal care, companion care, or supported employment;

(8) The applicable procedure codes contained in § 67:54:09:18 for the services provided;

(9) The applicable diagnosis codes contained in the International Classification of Diseases, 9th Revision, Clinical Modification (ICD-9-CM) adopted in § 67:16:01:26;

(10) The provider's name and medical assistance identification number; and

(11) The type of service provided.

A separate claim shall be submitted for each participant.

Section 39. That ARSD 67:54:09: be amended by adding thereto a NEW SECTION to read as follows:

67:54:09:24. Right to request a fair hearing. A participant or a participant's parent or guardian who is dissatisfied with a determination regarding services under this chapter may request a fair hearing in accordance with chapter 67:17:02. A participant may request assistance with the fair hearing process from an advocate.

An Act to revise certain rules relating to the Department of Human Services Medicaid waiver programs.

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I certify that the attached Act originated in the

HOUSE as Bill No. 1023

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Chief Clerk

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_____
Speaker of the House

Attest:

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Chief Clerk

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President of the Senate

Attest:

_____
Secretary of the Senate

House Bill No. 1023
File No. ____
Chapter No. _____

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Received at this Executive Office this _____ day of _____ ,

20____ at _____ M.

By _____
for the Governor

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The attached Act is hereby approved this _____ day of _____ , A.D., 20___

_____
Governor

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STATE OF SOUTH DAKOTA,
ss.
Office of the Secretary of State

Filed _____ , 20___
at _____ o'clock __ M.

_____
Secretary of State

By _____
Asst. Secretary of State