

# IHS WAIVER PUBLIC COMMENTS

The 30-day public comment period for the In Home Support waiver was from Monday, March 16, 2020 until Wednesday April 15, 2020 at 12 noon (Eastern Time). There were four Public Comment sessions held via Zoom that occurred on April 2, 6, 7 and 13, 2020. Three of the sessions were held in the evening and one session was held during the day to maximize the attendance of stakeholders. Comments were collected in multiple ways; through the facilitated sessions on Zoom, submission to a dedicated email address or by written comment mailed to DHHS. A summary of the comments by theme is outlined below including a response from the Bureau of Developmental Services.

## Service caps within the waiver

### Therapeutic, Respite, Assistive Technology:

**Comment:** Request increasing the cap on therapeutic, respite technology and allowing services that support transitional skills within the IHS waiver.

**BDS RESPONSE:** The caps for recreation, respite and technology were raised in the waiver renewal. Transitional skills may be supported within the In Home Residential Habilitation service category.

**Comment:** We believe that any service that has a treatment plan should not be considered adaptive recreation, as it is in fact treatment. We believe these services should be under other professional fees. Examples include hippotherapy and music therapy. Neither are covered by state plan. These two services are costly and typically consume the entire adaptive recreation budget. We support the increase of recreation services caps and believe these two items should be reclassified due to their treatment nature.

**BDS RESPONSE:** BDS considered these activities and they were the motivation to increase the recreation cap.

**Comment:** The therapeutic activity cap has been set at \$1,200 in the current waiver. I cannot find if this specific amount has been raised as it isn't clear to me where this may fall within the information that has been shared. We would ask that this cap be taken off or significantly increased. For us we use this money for music therapy for our son. This has been the single most impactful therapy our son has received, yet it is not covered by insurance. Even with providing the minimum amount, 30 minutes per week, we still exceed this current budget caps in place. It makes it so that we only have one option if we want to get him involved in an activity, given the added expenses that come along with that. Raising the cap will allow us to use his budget to support the needs through this therapy as well as the opportunity to explore other inclusive activities.

**BDS RESPONSE:** Therapeutic Recreation Services will now be included in the new service definition called "Recreation". This service has a cap of \$8,000 however, any Recreation over \$2,000 will require a licensed healthcare practitioner's recommendation.

**Comment:** It appears that the Therapeutic Recreation cap is now being raised to \$8,000. Because that is .such a significant increase, we do want to request clarification that we are understanding this correctly.

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**BDS RESPONSE:** This is correct. Recreation is the newly defined covered service.

**Comment:** We are in support of the respite cap being increase but do not support it being raised by only 5%. Often times, we have had to use our respite budget because of workforce challenges and having other people step in to support his needs as we continued to search for staff providers.

**BDS RESPONSE:** The BDS Bureau Chief has the ability to determine limits on a case by case basis due to capacity issues.

**Comment:** The cap of \$10k for Assistive Technology every five years is too low. Average cost of most Assistive Technology is more than that. What do we do if people need more? This worries me.

**BDS RESPONSE:** The waiver indicates that exceptions based on health, safety, or access within the home and the public would be reviewed as requested, on a case by case basis.

### **Maximum Budget Amount:**

**Comment:** The maximum budget available under the waiver may be too low. (Agency De-identified) appreciates that the maximum budget was increased from \$30,000 to \$35,000 but believes this cap may still be too low to meet the needs of some families. According to waiver documents, the average cost to serve one child in an ICF/DD (NH Licensed II-D) is approximately \$180,000 more than the maximum budget available to a child on the IHS waiver. Even with the increase, the cap may not be sufficient to meet the needs of children with the highest level of need in their own homes and communities. There's still no explanation in the waiver or to the Council about how the \$30,000 cap or \$35,000 cap was developed except that it's less than institutional services.

**BDS RESPONSE:** The Bureau increased the IHS Cap by \$5,000 to enable the current budgets to be enhanced while allowing additional children and youth to access the waiver. In addition to this increase, individuals may request to exceed the cap for environmental modifications if needed. Environmental modifications may go over and above the \$ 35,000 annual cap, however the amount above any beyond the annual cap may not exceed \$15,000 over a 5 year period.

**Comment:** (Agency De-identified) recommends the Bureau look at the experiences of families who are at or near the cap budget for this waiver and consider an exception to the budget cap to allow additional funding in certain circumstances when needed.

**BDS RESPONSE:** The budget cap of \$35,000 may not be exceeded, with the exception of environmental and vehicle modifications which require a BDS approval.

**Comment:** The maximum budget available under the waiver is too low.

**BDS RESPONSE:** The waiver cap was increased from \$30,000 to \$35,000. The Bureau increased the IHS Cap by \$5,000 to enable the current budgets to be enhanced while allowing additional children and youth to access the waiver.

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**Comment:** Currently our son has a budget that is at the maximum allotment for the waiver. He has been at this same amount for 4+ years and we always find it very challenging to meet his needs within that budget. While we are in support of increasing the overall budget, we are not in support of raising that to only \$35,000. Those caps will not meet the needs of our son and other families in the state over the course of the next five years and I am concerned that each year we will be put in the same predicament of needing to go back to our area agency in crisis towards the end of our fiscal year.

**BDS RESPONSE:** The waiver cap was increased from \$30,000 to \$35,000. This enables the current budgets to be enhanced while allowing additional children and youth to access the waiver, thus assisting more families.

**Comment:** How did the Department decide on the \$35,000 cap? I am concerned that this amount is not sufficient for children with significant needs, such as children who require 24/7 1:1 supervision.

**BDS RESPONSE:** The waiver cap was increased from \$30,000 to \$35,000 to account for rate increases on January 1, 2020 and January 1, 2021; additional services added to the waiver; and increased limits on service percentages to total amount for each individual as a result of their service agreement.

### Fencing:

**Comment:** Cap for fencing (\$2,500). We would ask that BDS consider raising this to reflect changes in the consumer price index over the waiver period.

**BDS RESPONSE:** There is a \$2,500 service limitation on fences. The BDS Bureau Chief has the ability to increase and determine limits on a case by case basis due to health and safety issues.

**Comment:** The cap on fencing is too low. The state must allow for exceptions to the cap in certain circumstances when necessary to keep the child safe. The current cap of \$2500 for fencing is likely reasonable for most families. However, some children are at risk of running or other safety issues and may need a fence that is more expensive to stay safe. The state should allow for an exception to the cap as outlined for other services in the waiver application.

**BDS RESPONSE:** Please see above response.

**Comment:** The cap on fencing is too low. The state must allow for exceptions to the cap in certain circumstances when necessary to keep the child safe.

**BDS RESPONSE:** Please see above response.

### Respite

**Comment:** If families request agency respite, area agencies would need to be prepared as this would now be a service under the IHS waiver and area agencies have not provided respite employees previously.

**BDS RESPONSE:** Correct. Families may outsource their respite needs to any agency or direct service provider.

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**Comment:** Pg. 81 indicates that respite providers that are AA arranged will have a background check from DCYF recommended for all respite providers. These records are sealed, and we have no way to get these records unless the worker gets them. We recommend that this is removed.

**BDS Response at Public Comment Session:** Current law does not allow area agencies to obtain a background check from DCYF. When the waiver was drafted, it was anticipated that there was going to be a legislative change to permit area agencies to perform these checks. However, due to the change in legislative operations due to COVID-19 emergency, it is BDS' understanding that this legislative change will not be made, and this requirement will be removed from the draft waiver.

**Comment:** PG 83 discusses Respite. It states that applicants must have one unrelated reference. It also states that if the respite is to be provided in the respite provider's home a staff member must visit the home prior and complete a report. PG 85 states that all arrangements shall be at the discretion of and the responsibility of the family when it is family arranged. We are recommending clarity that the background checks and home visits are during AA arranged respite. In family arranged respite we do not always know where it is being conducted and are not currently providing background checks, they are offered but not required. We recommend this section of the waiver be very detailed to keep all expectations of family arranged respite under that heading and a separate heading detailing expectations for AA arranged respite.

**BDS RESPONSE:** BDS reviewed and maintained the waiver as written.

**Comment:** We believe that trial work should be a separate line item from Respite. Respite is now capped at 20% of the budget which we support. It is designed to be a short-term break for caregivers. Many families use this to trial a potential employee or to use the person while they are in the hiring process. We would be open to a cap on trial work but believe families truly need respite to keep supporting individuals in the home and trial works takes away from that.

**Additional Comment from 4/13/20 Public Comment Session:** Adult DD waiver for PDMS indicates that trial work would be an appropriate use of respite. Trial work is giving the families the opportunity to assure that the workforce they are considering is going to work for their family. If included under the Respite line item, this would affect the 20% cap, so encouraging the consideration of creating a separate line item.

**BDS Response at Public Comment Session:** BDS encourages teams to look at Individual Goods and Services to see if this newly covered service will meet the needs for individuals requesting Trial Work.

### Clarifications

**Comment:** If a child needs a service dog to support life skills growth, funds ought to be allocated to facilitate the ability to get a dog as this will lead to more independence for the child.

**BDS RESPONSE:** The training of a service animal is a covered service under the new definition of Assistive Technology. The purchase of the dog is not covered.

**Comment:** If families request respite staff from their area agency, some agencies would need to be prepared to staff up to that, as that is a service under IHS that some have never provided respite employees for in the past.

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**BDS RESPONSE:** Please see above response.

**Comment:** The waiver does not outline a process when funds are limited, and families must wait for services. While the IHS waiver application indicates that the state does not limit the number of individuals served by the waiver, in actuality, the number of participants is limited to the funding authorized by the NH legislature. We hope that the legislature will continue to allocate sufficient funding each year to meet the needs of all eligible children. According to the most recent NH DHHS dashboard, there are currently 9 children waiting for the IHS waiver, down from a high of 94 in January 2017. It is critical that the state outline procedures for managing a waiting list in the waiver document and ensure the list is administered consistently across the state.

**BDS RESPONSE:** The procedure for prioritization of waitlist funding for In Home Supports is managed at the area agency level and is similar to the process that is used for the Developmental Disability waiver outlined in He-M 503.13(f). The Bureau will consider amending He-M 524 to reflect the process that is used for waitlist management relative to the In Home Support waiver.

**Comment:** The waiver does not outline a process when funds are limited, and families must wait for services.

**BDS RESPONSE:** Please see above response.

**Comment:** On page 107 of the draft IHS waiver it states that the family can hire someone from the age of 15 and older. Our region explored and wrote a practice to support this policy at the request of a family. Hiring responsibilities for individuals 15 and 16 of age have very specific guidelines for their work conditions and require extensive postings of their rights in all places that work is occurring. This is very difficult to manage as a joint employer. In addition, our insurance company would not cover anyone under the age of 18 to drive. These workers would not be able to drive which for the two families we explored this for was a deal breaker. We would be at substantial liability as a joint employer due to the specific laws and regulations for this workforce. You can find detailed information at <https://www.nhada.com/resources/youth-employment-laws>. We are recommending that hire be at 17 at the earliest and prefer 18.

**BDS RESPONSE:** BDS determined that the current flexibility offered in the waiver supports a number of families' needs.

**Comment:** Personal Care and Habilitation is addressed on page 91 of the draft waiver. It states that in 1(a) and 1(c) that the child has more needs developmentally or mental health needs than those of their disabled peers as determined by a recognized standardized assessment. We do not currently have any standardized tools that can measure this. The SIS measures all the support needs not just developmental. We certainly do not have access to a mental health assessment with this information. We can look at scores for SIS for 16 and older and have the HRST. However, if you are to compare them to others with the same developmental disability, we do not have a tool. We recommend you outline specifically which tools or remove it as an option. It could potentially be replaced with an IHS assessment score total. "The states does not make payment to relatives/legal guardians for furnishing waived services." In the first paragraph on PG 91 it states that payment is available to a parent of a minor child. IHS waiver supports

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children through the age of 18. We believe the waiver should also include legal representative to represent those who are over 18 and have guardianship.

**BDS RESPONSE:** BDS wants to ensure the area agencies have the option to use a standardized tool that is appropriate for the child. BDS supports the use of the Supports Intensity Scale for individuals over 15 years of age and the Health Risk Screening Tool for all waiver participants.

**Comment:** Will services approved under IHS waiver be automatically approved when an individual transfers to adult services?

**BDS RESPONSE:** The IHS waiver and adult Developmental Disabilities (DD) waiver have different services and requirements. While there is no automatic transfer or approval of services, historically children transition from the IHS waiver to the adult services waiver have not experienced a gap in services.

**Comment:** On page 56 the waiver draft says that “Goals will be reported on monthly by the entity responsible to deliver the service.” We recommend clarifying if this is the person providing the service or just the entity responsible.

**BDS RESPONSE:** Entity may mean the person responsible for the service agreement which would be the Parent/Legal Guardian. The team should identify the entity responsible for a service.

**Comment:** Pg. 74 under Non-medical transportation in the check boxes indicates that a relative can get paid for this service but does not have legally responsible person or legal guardian checked off. The narrative details that a family can provide this service. In some cases, the IHS individual will be 18-20 years old and may have a guardian in place. We recommend checking these boxes. X

**BDS RESPONSE:** Thank you for your feedback. This box has been updated to reflect this recommendation. The waiver allows services to be provided by a legally responsible person, relative and legal guardian.

**Comment:** Strongly support the development of the manual through the Stakeholder group, the opportunities to provide self-assessment for families entering to know which level of participant direction makes sense for them, as well as the orientation, remediation, and transition opportunity. Our question lies around, if it is developed after the submittal of the waiver how will it be implemented so that we have consistency across the state and so that the families and users of the service understand what those expectations are?

**BDS RESPONSE:** Agencies will be expected to implement and consistently use the manual. This may be reflected in an amendment to the waiver, an amendment to the rule, an amendment to the agency’s contract, or a combination of the above.

**Comment:** We recommend that with documentation of status on file for individuals with Autism who are on a waitlist for ABA services through a Medicaid approved ABA provider, the waiver be permitted to purchase ABA services from a non-Medicaid provider during the interim. EPSDT is state plan covered but not actually accessible. Many of our families are on waitlists to receive ABA through state plan Medicaid but are on a 100+ person waitlist (lasting more than a

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year for that service). We believe that they should be able to access the service up until it is a real Medicaid covered service for them. The shortage in providers who accept Medicaid remains a barrier to receiving this evidenced based therapy. Our families tell us they have private providers who are willing to provide it now.

**BDS RESPONSE:** The waiver cannot cover services covered by the State Plan, and therefore cannot be used to pay for State Plan covered services while an individual is waiting to access those services. A denial letter from the MCO is required in order to request waiver funding for an item or service that would otherwise be covered by the state plan.

**Comment:** We recommend that the 524 should be able to cover BCBA services for a participant who does not have an Autism diagnosis through the waiver as they are not eligible for this service under state plan Medicaid. Many families and individuals need this clinical guidance. The Medicaid approved BCBA and ABA services are only available to those with Autism diagnosis, therefore not making it a state plan covered service. Pg. 66 of the waiver draft discusses consulting.

**Additional Comment from 4/13/20 Public Comment Session:** Through experience, it seems as though while children are receiving ABA therapy, there are not a lot of clinicians that are interested in providing the training and clinical oversight to staff working in the home that they do not work for. This is a challenge to fund through the waiver due to the line around “state plan benefit”. There are not clinicians wanting to provide this and if individuals only want the clinical oversight there are not a lot of Medicaid State Plan providers willing to provide this, but there are providers who are not State Plan providers willing to provide this.

**BDS RESPONSE:** The waiver cannot cover services that are covered by the Medicaid State Plan. Issues with capacity to provide State Plan services need to be addressed by the MCO.

### Environmental and Vehicle Modifications

**Comment:** Please clarify under the Environmental and Vehicle modifications limit of \$15,000 whether this would potentially cause a participant to exceed their \$35,000 individual waiver cap for the year in which the modification will be paid, and if there is any remedy for that. If BDS limits as stated below we won't be able to do many vehicle or bathroom Environmental Modifications under IHS, as many tend to go over the \$15,000 cap. If a family needs a significant vehicle/home modification will they need to give up their IHS program to get it under the DD waiver?

**BDS RESPONSE:** No, modifications will not be provided for IHS waiver participants under the DD waiver. Appendix C explains the newly developed language pertaining to vehicle or environmental modifications related to health, safety, or access. The modifications will be billed within the IHS waiver. Environmental and vehicle modifications that would cause the yearly budget to go over \$ 35,000 are permissible with prior authorization. However, over a five year period, the cumulative environmental and vehicle modification over the \$35,000

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**Comment:** Many vehicle and environmental modifications tend to go over the \$15,000 cap that the IHS waiver is implementing. If a family needs a significant vehicle or environmental modification, will they need to give up their IHS program to get it under the DD waiver?

**BDS RESPONSE:** No, modifications will not be provided for In Home Support waiver participants under the DD waiver. Appendix C explains the newly developed language pertaining to vehicle or environmental modifications related to health, safety, or access. The modifications must be billed within the In Home Support waiver.

### Case Management

**Comment:** The state must take steps to ensure families can access independent case management and that all case managers are held to the same high standards to serve families. We are pleased that families will have the ability to choose an independent case manager and it is important that expectations for both area agency and independent case managers are high. If a case manager is not meeting the needs of the family or otherwise not performing his/her duties, the case manager should be held accountable.

**BDS RESPONSE:** Thank you for your feedback.

**Comment:** We believe that satisfaction should be reported by the family. The current regulations states that service coordinator will document satisfaction levels. This waiver draft indicates that the SC will document satisfaction on page 109. True self direction asks the family to hold that responsibility. We have asked our families to document that monthly on their progress notes with success and recommend the waiver be clarified that the family needs to report satisfaction. As self-direction defines, the family should be the lead to communicate when they are satisfied or not. The service coordinator is on for reviewing satisfaction responses and responding when satisfaction is not met. This supports keeping families in the driver's seat.

**BDS RESPONSE:** In accordance with He-M 524 and the IHS waiver, service coordinators are responsible to ensure the satisfaction of services is documented.

**Comment:** Please explain the extent of the area agency's oversight role when parents choose independent case managers? It appears that the area agencies are given a lot of control in the decision concerning who parents may choose and whether they will be able to retain the independent case managers they choose. Area agencies have a financial incentive to provide case management services. I am concerned that the draft waiver provides too much power for the area agencies to decide who the family may choose to provide case management. Further, I am concerned that area agencies might delay approving a family's chosen case manager and/or terminate a case manager without sufficient cause. Given the financial disincentive for area agencies to approve independent case managers, I am concerned that area agencies might misuse the authority in the draft waiver and disempower families who would prefer to use independent case managers. For these reasons, I suggest that BDS, rather than the area agencies, consider families' requests for independent case managers and conduct any necessary oversight of independent case managers.

**BDS RESPONSE:** He-M 524.07 addresses coordination of In Home Supports including oversight by area agencies.

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### Family Considerations/ PDMS Committee

**Comment:** The state must assess and take steps to reduce or streamline documentation requirement to reduce the administrative burden on families. There is an expectation that progress notes will be written at a minimum, monthly and will be submitted in a timely manner. Progress notes are an important record of care for the child, but the state must consider administration burden on AAs and families in implementing these and other standards. As the state improves Medicaid technology, it must consider a system that allows family and service coordinators to add notes directly to the record, see the status of the individual's budget live and on demand, provide the tools to allow families to actively manage IHS services.

**BDS RESPONSE:** A PDMS Long Term Supports and Services committee will be reviewing the above comments and placing them on the agenda for further discussion.

**Comment:** The state must assess and take steps to reduce or streamline documentation requirement to reduce the administrative burden on families.

**BDS RESPONSE:** Please see above response regarding the LTSS PDMS committee.

**Comment:** The PDMS committee, as outlined in the waiver, must also ensure the voices of families are considered in waiver implementation. As outlined in the waiver, the committee is responsible for defining the rights and responsibilities of families. The committee should also be tasked with the development of clear, family friendly documents outlining expectations of area agencies, service coordinators, and BDS. The committee should also address training needs and requirements including how family voices in can be incorporated in trainings for case managers and area agencies. As the committee is implemented, we believe it would be better to separate PDMS for children in the IHS waiver verses PDMS for adults in the DD and ABD waivers.

**BDS RESPONSE:** Thank you for the feedback. The LTSS PDMS committee will include family representation. The committee will be given the opportunity to review the above noted suggestions and make recommendations to BDS.

**Comment:** The PDMS committee, as outlined in the waiver, must also ensure the voices of families are considered in waiver implementation.

**BDS RESPONSE:** Please see above response.

**Comment:** I believe it is great to have this PDMS Committee, as it is a good idea to have families come together and work with BDS to be clear about what expectations are. Hope to consider having that committee develop clear expectations for area agencies so that families can know exactly what to expect so that we can hold area agencies accountable so that when deadlines need to be met, as accountability does go both ways.

**BDS RESPONSE:** Thank you for your feedback.

**Comment:** We recommend that the justification for a rate above \$15.50 dollars only be necessary for paying someone above \$20.00. Given the workforce challenges and the intensity of the positions, we are having to write justifications for nearly every case. In order to respect true budget authority, placing caps on what a family can select for the rate of pay for personal care need to be considered carefully. Budget authority is about being able to determine within your allocation how to use the budget to the best advantage. Placing worth in the budget on personal

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care services should be supported as this waiver is a personal care waiver. This creates more work on the family's end as well and delays hiring. In addition, the current practice also includes that if a family wants to pay someone more than \$20.00 then it needs not just agency approval but also BDS approval. If that is going to be the requirement, we would like to see it in the waiver.

**BDS RESPONSE:** The current criteria will be maintained for a wage justification within the in-home support waiver. BDS will request that the LTSS PDMS committee to add this topic to their agenda and provide recommendations to BDS.

**Comment:** Though remediation is mentioned in various spots in the waiver, the process is not detailed. On page 100, it states "The agency may require a family to delegate their services to a third party if remediation within the PDMS model is unsuccessful or poses a risk." It would help to have a more clear criteria for "unsuccessful remediation". When move to a third-party entity is that a vendor or a person? Is there clarity of whom this should be and who pays for this service?

**BDS RESPONSE:** The LTSS PDMS committee will be reviewing the above comment and making a recommendation.

**Comment:** On page 125 the three models of PDMS are outlined. The first two models are already in place. It appears to us that this third model Agency of Choice Model with Agency Management is already permitted under Agency with Choice. You have the right to hire a provider in an Agency with Choice Model already. The family can choose any qualified provider and that includes a vendor. It is our recommendation this be clarified as an option under Agency with Choice and remove the third option as it is confusing when it is already permitted in an Agency of Choice model (2).

**BDS RESPONSE:** Thank you for this feedback.

### Training

**Comment:** We recommend that there be an Orientation, Remediation, Transition component of the waiver to support and manage families in their self-direction roles. Success of self-direction comes from understanding the responsibilities to self-direction and having tools to support and simplify processes. We believe this is done with a successful Orientation program. If a family gets off track in their responsibilities (reporting compliance, contact, budget lapse) we believe a formal structure to identify the challenge, brainstorm a plan to correct, and review to ensure the plan worked in a set time period is necessary (remediation plan). After 3 attempts at remediation for the same area, a transition to a traditional model of service should be permitted. Our current waiver only allows involuntary terminations for immense clinical risk. In order to support the regulations and assurances to CMS for IHS we must be able to support and hold accountable families for their role in self-direction. We believe this model is supportive, fair, and is a best practice as identified by (De-identified) in our recent consultations. (Agency De-identified) is willing to share the best practices and examples we have collected on this best practice nationwide. The Draft mentions remediation and a PDMS workgroup to look at these ideas moving forward. Our recommendation is that the remediation plan be entered into the waiver as an amendment once the state develops a system.

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**BDS RESPONSE:** The remediation plan will be added to the regulation once the state develops a system based on the LTSS PDMS committee's recommendations. The waiver discusses the remediation process in Appendix H.

**Comment:** We recommend that the training requirements outlined in the 524 waivers be reviewed. The training criteria outlined would result in months of training prior to working with the individual delaying the process for workforce. We support the training requirements outlined in the 506. However, the additional components that a worker who has not worked with the disability type is required to be supervised for the first 16 hours of work and then monitored monthly in each of the environments they provide care is not a realistic or valuable requirement. The waiver requires training specific to the individual. We support that. However, if the above requirement was implemented it has tremendous commitments asked of the family/individual. For example, if the DSP is taking the person to hippotherapy, the family would then need to drive out to hippotherapy one time a month to make sure they are supporting them correctly. The DSP and an instructor would be supporting the individual. It is not realistic that a family can go out and provide this supervision and it is their responsibility per the self-direction model. In addition, the 524 requires training in several areas or to demonstrate competency. The training should be selected by the family to determine what they find meaningful. It is not necessary for a DSP of a 4-year-old to show competency in supporting and individual on the job. In our region, we require the 506 and offer a listing of other training that is available in Relias. If the family requires it, they must pay for it out of their budget and we monitor the compliance. If DSP's must attend all the training in the regulation, the family must pay for it. Budgets are not big enough and it creates delay in the DSP being able to provide the care until the training is met.

**Additional Comment from 4/13/20 Public Comment Session:** Continue to champion the aspect of the 506 that families can select additional training; we are recommending that some components that are mandatory be looked at to give more choice to families of what is appropriate and necessary for their specific child.

**BDS RESPONSE:** BDS will review the training requirements as recommended.

**Comment:** One of the concerns that families brought up was about how their staff got trained and how the training of staff was impacted in their budgets. I do not know if that is at all a consideration with the services that the IHS waiver provides or if that will still be an off the top cost for people. There was a lot of concerns from people with inconsistencies in significant impacts of budget and how much they would be required to pay for training through the area agencies.

**BDS Response during Public Comment:** Individual Goods and Services is a newly proposed covered service and may be accessed if there are outstanding needs that are identified in the assessment-based person centered plan.

**Follow up comment** from (De-identified): This would help people that would not be up against the cap of the waiver. And if they are up against the cap, they would still be in a similar situation.

**BDS RESPONSE:** Families have the flexibility to direct their allocated funding for residential habilitation services provided it does not exceed the waiver cap. If families are still getting close to the waiver cap, the service coordinators can assist team with identifying state plan services and other generic resources that may be available for this purpose.

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## Process Related

**Comment:** Given that the notice/comment period begun just as the COVID-19 crisis came to a head (schools and then businesses closed etc.), and that MCAC was only recently provided with notice and the waiver, would the Department consider extending the comment period for 30 days to allow sufficient opportunity for Stakeholders and MCAC to provide public comments?

**BDS RESPONSE:** BDS provided listening sessions as well as public comment sessions. The listening sessions were held on location throughout the state. The public comment sessions were held remotely via Zoom. As a result of COVID-19, BDS received approval by CMS to have zoom sessions and agreed to a power point presentation. The public comment period included a thirty day period of time. Public notice was provided on the DHHS website and was published in two statewide newspapers. No additional comments were submitted to BDS after 4/15/2020 from the public. CMS did not grant extensions to New Hampshire for waiver renewals based on COVID-19. BDS has met the expectations of CMS within the desired timeframes.

**Comment:** How many participants were there in the Zoom public comment sessions?

**BDS Response at MCAC Meeting:** 21

**Comment:** Is 21 participants consistent with previous draft waiver feedback numbers? I wonder if the pandemic has impacted families' ability to participate. It is vital that the most important voices be heard. How many families participated in the Listening Sessions?

**BDS RESPONSE:** An estimated 17 people attended the listening sessions for the In Home Support waiver.

**Comment:** If we don't feel that there are enough comments can we ask CMS again for an extension?

**BDS RESPONSE:** BDS believes representation was substantive and as a result significant changes were made to the In Home Support waiver. The changes are documented in the major changes area of the waiver.

**Comment:** Will DHHS include public comments even if they were received prior to the official timeframe, in the final draft waiver submitted to CMS?

**BDS RESPONSE:** Listening sessions are not considered recorded public comment.

**Comment:** Due to Direct Support Professional and employee shortages, it is often difficult for parents to hire individuals to work with their child. The request would be to allow parents to provide the services. Currently, IHS waiver funds cannot be utilized by a family if agency employees are not available and families have a hard time hiring someone.

**BDS RESPONSE:** State Administrative rule He-M 524 provides the criteria for family members to be paid to provide in home supports.

**Comment:** The state must take steps to ensure families can access independent case management and that all case managers are held to the same high standards to serve families.

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**BDS RESPONSE:** Case management agencies will be held to the same standards, regulation and oversight.

**Comment:** It is our recommendation that reference checks be optional. The Federal and State DOL do not require reference checks. PDMS is about hiring people you know to provide services in a relationship model. In our experience, a good majority of families have a prior relationship with personal care workers. In addition, most businesses will only confirm dates of hire and will not give feedback on their performance. The other references are friends and most always give a positive review. Families should have the option, though it should not be required. It also adds a delay in the hire process. The waiver was adjusted from requiring 2 references to 1 non-family reference.

**BDS RESPONSE:** BDS reviewed your original request for reference checks to be optional but continue to see the value in having a minimum of one reference check.

**Comment:** We recommend a fraud policy sign off from families at the start of services to ensure there is an understanding of what fraud means including examples. This is a concern CMS likes to assure is in place. (Agency De-identified) is willing to provide some samples we have collected from other states as best practice.

**BDS RESPONSE:** This will be an important task of the PDMS committee to review and recommend adoption of such policies. BDS appreciates the willingness of (Agency De-identified) to share its work.

**Comment:** Joint employment – PDMS models require area agencies to be in a role as Joint Employer. Nationwide this model proposes challenges to support this effectively and in line with DOL requirements. At times, our 524 regulations and DOL regulations are in conflict. Our 524 regulations require that the family or individual authorize each expense. When it comes to signing off on timesheets, this becomes a conflict. DOL requires that the Employer of Record (area agencies) pay any timesheet submitted by an employee despite supervisor signature. In our region we support 800 field employees. It has been extremely challenging for us to get compliance from workers and the family/ individual to sign off as the supervisor confirming the hours were worked. This is challenging because fraud can occur without supervisor signature and with budget authority, we should not be paying for anything unless authorized by the family/individual. In order to address this, we believe the Orientation, Remediation, Transition Plan (ORT Plan) should be supported to workforce and supervisors who continuously do not sign timesheets. In our recent audits with DOL, they expect us to pay the timesheet in the pay period it was received. We will be penalized for any late payments. This means we can't wait for families to get back to us. In our region we offer electronic, paper, scans, emails, and faxes for submitting timesheets. In our region we also offer Family Facilitators to come to work with the family biweekly to support timesheet submittals and other compliance portions. This is a major challenge in operations, and we spend large amounts of time chasing workers and supervisors for signatures. We believe the ORT Plan is a reasonable and fair way to support families.

**BDS RESPONSE:** BDS appreciates the concerns raised above and took efforts to address each of these areas in the waiver. The LTSS PDMS committee will address ORT and make recommendations to BDS.

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**Comment:** Family responsibilities should be outlined in our regulations. When we researched nationwide, it became apparent that NH regulations are one of the only regulations that do not state in the waiver what the family is on for. Most of the areas in the waiver state that the area agency or Service Coordinator is responsible. The draft continues to use this language. For families in self-direction, our waiver should support and be clear on what the family is on for. This will support consistency statewide in expectations, but also helps for families to decide if they are committed to this model of services. We support the development of a statewide manual. However, if our waiver is not detailed as to what they are on for this will continue. Examples include but are not limited to:

- Individual/ representative will make monthly contact with their service coordinator through phone, email, or face to face.
- Individual/ Representative will maintain home visits as outlined in the SA.
- Individual/ Representative will authorize each expense, or they shall not be processed.
- Individual/ Representative is responsible to ensure monthly progress notes are submitted.

**BDS RESPONSE:** Thank you for this feedback. As BDS reviews all regulations, it will be important for all agencies to provide detailed recommendations for changes.

**Comment:** We recommend that an assessment tool be completed for everyone asking to enter IHS waiver for their ability and skills in self-direction. The self-assessment would allow for families to determine if they want to take on that role based on the assessment results. It will also help us to develop a Family/ individual support plan for training and supporting families/individuals in self-direction. This makes is easy to offer Family Facilitation Services to support a family in the first few months of onboarding and ongoing if they identify they need it. (Agency De-identified) is willing to share some national examples of this as best practice. We support that this is a priority for the PDMS statewide group to address. We recommend it is added to the waiver in an amendment when finalized.

**BDS RESPONSE:** Thank you for the feedback. If the recommendations of the LTSS PDMS committee require a waiver amendment, BDS will respond accordingly.

**Comment:** On page 107 of the draft IHS waiver it states that the family can hire someone from the age of 15 and older. Our region explored and wrote a practice to support this policy at the request of a family. Hiring responsibilities for individuals 15 and 16 of age have very specific guidelines for their work conditions and require extensive postings of their rights in all places that work is occurring. This is very difficult to manage as a joint employer. In addition, our insurance company would not cover anyone under the age of 18 to drive. These workers would not be able to drive which for the two families we explored this for was a deal breaker. We would be at substantial liability as a joint employer due to the specific laws and regulations for this workforce. You can find detailed information at <https://www.nhada.com/resources/youth-employment-laws>. We are recommending that hire be at 17 at the earliest and prefer 18.

**BDS RESPONSE:** BDS determined that the current flexibility offered in the waiver supports a number of families' needs.

**Comment:** On page 29 of the waiver it indicates that the individual must score a minimum of 2 factors on the IHS assessment to qualify. The IHS waiver is meant to support the most challenging cases we serve. Due the recent funding of the IHS waitlist we have seen a number of

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individuals with only 2 factors be funded. This can become a challenge because most people we serve can meet a two on the assessment. If the individual's needs are not high enough, they may be conditionally eligible and become ineligible. Also, most of the time these cases are used just for coverage hours versus to address and maintain a child in the home due to their challenging care needs. We believe that this waiver should be reserved for a child with 3 individual factors and any other combination of family factors. In addition, we believe that there should be an additional child factor about level of personal care. A number of children that are total care tend to get a lower factor because they are not aggressive, they sleep through the night, and do not pose a safety threat. However, their families are on for providing all the care and they end up being prioritized under someone who has no individual factors and just family factors.

**Additional Comment from 4/13/20 Public Comment Session:** For children with a factor of two, there is a challenge of developing goal work that is driven more towards maintaining that family verses respite (just a break or coverage for caregiving) and really getting into the intensive supports to the family. What we find is that almost everyone meets a two of that factor making it difficult to indicate the best use of the waiver. For those who score low on the In Home Supports Assessment (especially those with very involved physical care needs), their needs are very intensive and the category of physical care needs is a missed opportunity on the In Home Supports Assessment because many who need around the clock care doesn't have a good way of measuring this on the current assessment. Recommend looking at this and to add a component of total care needs to the assessment.

**BDS RESPONSE:** Thank you for your feedback regarding eligibility.

**Comment:** Personal Care and Habilitation is addressed on page 91 of the draft waiver. It states that in 1(a) and 1(c) that the child has more needs developmentally or mental health needs than those of their disabled peers as determined by a recognized standardized assessment. We do not currently have any standardized tools that can measure this. The SIS measures all the support needs not just developmental. We certainly do not have access to a mental health assessment with this information. We can look at scores for SIS for 16 and older and have the HRST. However, if you are to compare them to others with the same developmental disability, we do not have a tool. We recommend you outline specifically which tools or remove it as an option. It could potentially be replaced with an IHS assessment score total. "The states does not make payment to relatives/legal guardians for furnishing waived services." In the first paragraph on PG 91 it states that payment is available to a parent of a minor child. IHS waiver supports children through the age of 18. We believe the waiver should also include legal representative to represent those who are over 18 and have guardianship.

**BDS RESPONSE:** BDS wants to ensure the area agencies have the option to use a standardized tool that is appropriate for the child. BDS supports the use of the Supports Intensity Scale for individuals over 15 years of age and the Health Risk Screening Tool for all waiver participants.

**Comment:** On page 109 it indicates that the service coordinator is required to assist with recruiting, screening, hiring, and training, providers. This language should be clarified. As joint employers we provide and support families with the paperwork and coordinating the training that they identify. Providing the actual screening and training directly oversteps the role of the family managed supervisor. The service coordinator should not be screening and hiring. That is the role

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of the family. SC supports the family in accessing aspects to enroll the worker as an employee as employer of record. This type of support can sometimes be looked at as providing a service in the best practices of PDMS. Due to our HCBC corrective action plan for conflict free case management we want to ensure these roles are clear so that they are not seen as a service which could create conflict of interest. Area agencies act as employer of record but no staff especially a SC should be on for screening, training, recruiting. We can offer places for a family to post an ad. The responses should go directly to the family to review and screen. Even in the tiered model of PDMS outlined in the waiver we need to ensure we are not creating conflict of interest.

**Additional Comment from 4/13/20 Public Comment Session:** (Agency De-identified) cautions watching the threshold and language regarding when an area agency is coordinating verses providing a service.

**BDS RESPONSE:** The language in the waiver was amended to be consistent with the role of the service coordinator.

### Budget

**Comment:** We recommend that funding utilization outlined in the 524 support adjusting funding allocations to the families/individual's utilization be permitted. As the area agency we are required and monitored on our efforts and outcomes of managing lapse in funding. The current IHS waiver draft on page 143 outlines that after 2 years of underspending we can approach the family about adjusting the budget to utilization. We are working with families monthly to manage their budgets and develop spending plans anytime they are off track with spending. If an individual's needs are being met, we should be able to adjust with the commitment that any adjustment will not decrease any of the services that they have been receiving. We also recommend that for chronic underspending the ORT Plan be implemented as the strategy to support the family to spend in line with their plan and/or potentially transition to more traditional services if spending can't meet demands. We recommend adjustments can be made after one-year history of underspending with the ORT Plan in place.

**BDS RESPONSE:** BDS reviewed and discussed and determined that the two years in the draft waiver was appropriate.

**Comment:** On page 143 the waiver draft also indicates that permanent reductions of funding would not be permitted if the reason for the lapse was related to a cause outside of the individual's control such as lack of workforce. We recognize that families sometimes have challenges that are not realized despite their efforts to spending funding. However, after three years the funding is still lapsing. If none of their efforts are working, perhaps this is the time to switch to a different model of services. It is challenging to allow these funds to stay with an individual that are not spent for three years when we have other families who have figured out how to maintain workforce and can use their funds. We support that three years is a long enough time to know if this model is going to work and believe funding should be adjusted at that time. We do not believe that legislators would support leaving the same funding unspent for three years and in this case because the way it is written, could go on for a lifetime. The funding should be adjusted to utilization and if the need arises and the family can support a model to get the need met, we can consider one-time funding at that time.

**BDS RESPONSE:** Please see above response.

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**Comment:** We recommend that lapsed funds from the IHS waiver be allowed to be spent across waivers. IHS is difficult to make one-time reallocations if most participants are experiencing lapse. The funds are not permanent so we can't bring in new families and it can be challenging to use it all. If we could use the funds in Family Support for unmet needs or the other waivers it would ensure funding annually would be used.

**BDS RESPONSE:** Reallocation is done at the state level and not the agency level. The approved SFY 20-21 biennium enables the Department to move funds between waivers (DD, ABD & IHS) at the state level. As of SFY20-21 State Budget, the three Bureau of Developmental Services (BDS) waiver accounting units are dedicated accounts and can only be transferred between and amongst them. The Family support accounting unit is not a dedicated account so the three waiver accounting units cannot transfer to it. In addition, family support is 100% State/general funds, not Medicaid/Federal funds. Family support is part of the State/General Fund and Part C dollar contract between the State and the area agencies.

### Other

**Comment:** Transportation by Family Managed Employees (FME's) is an included service in the IHS waiver, but not allowed by area agency's insurance company. Area agency is not able to get insurance to transport anyone under the age of 18.

**BDS RESPONSE:** The Bureau understands that this comment is specific to one area agency. The agency has a contractual obligation to facilitate the provision of waiver services. The Bureau recommends that if an agency is unable to acquire the insurance required by the In Home Support waiver and their contract, that the agency seeks alternative options.

**Comment:** Managed Employees is also an included service, but some area agencies have auto insurance restrictions that do not allow their employees to transport anyone under the age of 18.

**BDS RESPONSE:** Please see above response.

**Comment:** The IHS waiver does not include state federal money used for transitional housing programs administrative support staff paycheck. As (Agency De-identified) staff is paid to provide functional support services 24-7, not merely maintaining mentally certified label long-term dependency. The system is broken because when (Agency De-identified) was set up, it only covered respite care and employment support for able bodied adults who can work, but intellectual developmental disability adults get stuck in adult daycare.

**BDS RESPONSE:** The In Home Support waiver provides supports for individuals who reside in their family home. It does not fund out of home residential services.

**Comment:** Transparency in the administration of the waiver and oversight of area agencies is critical. In the waiver application, the state outlines its oversight of area agencies in Appendix A, Item 6, Assessment Methods and Frequency. Over the past two years, the Quality Council has made repeated requests to the Bureau of Developmental Services for additional transparency in the assessment of area agencies, which the Bureau has consistently refused to provide. Currently,

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the state will only provide limited information about its assessment of the quality of area agency services at redesignation or once every 5 years. The state must be transparent about the results of the annual quality review process and Governance Desk Audit to the Quality Council and other stakeholder. The annual service file review results, provided to the Bureau of Developmental Services, annually, must also be provided to stakeholders upon request, promptly.

**BDS RESPONSE:** BDS will consider this recommendation.

**Comment:** Transparency in the administration of the waiver and oversight of area agencies is critical.

**BDS RESPONSE:** Thank you for your feedback.

**Comment:** Question regarding Cost Neutrality and the cost of (NH Licensed II-D) (I haven't made it to Appendix J yet). What is average daily cost to stay at (NH Licensed II-D), as I don't feel like I have a good background of it?

**Response during Public Comment:** (NH Licensed II-D) offers four different service models with corresponding rates.

**BDS RESPONSE:** Appendix J of the HCBS waiver has the actual data and can be reviewed in its entirety.

**Comment:** Several times during the height of the Covid-19 Emergency the Bureau received questions relative to the 3 waivers regarding remote services. In summary, will the Department consider adopting remote services through telehealth as we have in response to the Covid-19 emergency?

**BDS RESPONSE:** The Department has been working with the area agency system and other states to consider how to implement a best practice for remote service through telehealth that takes into consideration individual choice, cost effectiveness and compliance with CMS requirements. As a result, the Department has provided for some services to be considered.