

MEMORANDUM

TO: Providers of HCBS Waiver Services

FROM: Debra K. Payne, DIDD Commissioner 

DATE: September 24, 2015

SUBJECT: Recoupment of Payments for HCBS Waiver Services

The purpose of this communication is to remind DIDD HCBS providers that residential and day services rendered at an unauthorized Level of Need (LON) are not reimbursable. HCBS waiver services are approved based on the person's assessed needs. Documentation supporting a particular Level of Need (LON) must be in the person's Individual Support Plan. Each LON has specified staffing requirements, defined in the Provider Manual¹ which is accessible online ([here](#)).

For example: Supported Living LON 4 (SL LON 4) is the most frequently authorized residential waiver service. The staffing requirement for SL LON 4 is the provision of a second staff person at some point during the person's day. This second staff person is commonly referred to as "peak staff". **If this second staff person is not provided then SL LON 4 cannot be billed.**

When requirements for the authorized service(s) are not met, providers are not permitted to bill for the authorized service. Reasons for recoupment are detailed on page 3 of the Recoupment Policy². Additionally, please note the following excerpts from both the Provider Agreement and Provider Manual.

- The Provider Agreement requirement in Clause A.19. Service Authorization, which states in part:
Any payment for service referenced in and subject to the provisions of this Agreement shall be limited to and in accordance with the approved Individual Support Plan or Individual Support Plan Amendment for such service. Provider compensation shall be contingent upon the satisfactory completion of authorized, approved service as specified in the Individual Support Plan or Individual Support Plan Amendment

¹ http://www.tn.gov/assets/entities/didd/attachments/Provider_Manual.pdf

² <http://www.tn.gov/assets/entities/didd/attachments/80.4.5-Recoupment.pdf>

- The Provider Manual requirement in Chapter 5.11 General Requirements for Waiver Services, which states in part:
The following list of requirements are applicable to providers of Medicaid funded HCBS waiver services and state funded services, unless otherwise specified.
5. Services shall be provided in accordance with the approved ISP.
- The Provider Manual requirement in Chapter 5.9 Assuring Adequate Staff to Provide Services and Adhering to Service Schedules, which states in part:
Any provider who agrees to provide direct services such as residential services, day services, or personal assistance services must ensure sufficient qualified and trained staff to provide all authorized services in accordance with the staffing plan.
- The Provider Manual requirements in Chapter 11.1.g and Chapter 11.1.g.1 which state in part:
11.1.g. Staffing Plans. Providers of residential habilitation services, intensive behavior residential services, family model residential supports, medical residential services and supported living services must develop a staffing plan (i.e., schedule) that addresses staffing needs for each person.

11.1.g.1. Staffing Plan Requirements. The staffing plan must reflect:

1. Compliance with staffing standards specified in licensure regulations.
2. Adequate numbers of trained staff to implement the ISP, including implementation of any staff instructions that are determined necessary, and ensure the health and safety of persons.
3. Sufficient staff to cover the staffing requirements as described in the documents, Level Descriptions for Day Services, Level Descriptions for Family Model Residential Services, Level Descriptions for Residential Habilitation, Supported Living, Medical Residential and Special Needs Adjustment, Level Descriptions for Respite Services, Staffing Standards for Residential and Day Services.

The Recoupment Policy and the related Provider Manual requirements listed above reflect the state's longstanding expectation that staffing plans are to be individualized according to the specific needs of each particular person and documentation must indicate the provision of those supports. If the service is not provided as required, but is billed as if it were; then potential fraud, waste, and abuse will be investigated and, if payment has been made in error, it is subject to **full** recoupment based on Federal Program Integrity regulations.

Please note that having two (2) staff present during a shift briefing/overlap is not sufficient to meet the requirements of "peak staff" or LON 4 services. The Level Description for Level Four states "The person's staffing plan must specify the activities for which two (2) staff is necessary." If the person's

residential service is authorized at LON 4, then it must be provided as required, which includes daily compliance with that particular person's staffing plan.

We do not believe it is the intent of any provider to defraud the system. Residential providers are encouraged and asked to assess the support needs and the staffing practices and patterns for all people supported. It may be that some do not need a "peak staff" every day but rather, can be safely served at LON 3 with a Special Needs Adjustment for those intermittent days and/or times a second staff person is needed. We ask that any assessments and resulting ISP amendments be completed by October 31, 2015. Beginning November 1, 2015 the payment for any services provided not in accordance with the approved LON will be recouped in its entirety and no "rate adjustments" will be allowed or approved.

With Day services, it is worth noting that recoupments rarely involve rate adjustments (e.g. CB Day 6 to CB Day 4). The majority of people served have more than one type of Day service authorized on their ISP, thereby allowing rebilling to take place. For example, if In-Home Day is provided but CB Day is billed and both are on the person's plan, an authorized service was provided. This means the billing error may be corrected through the rebill process.

If there are any questions, please contact DIDD Director of Risk Management & Licensure, Lee Vestal. He can be reached at Lee.Vestal@tn.gov or by phone at (615) 253-8733.